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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 212.

SPRAIGUE, SOULLEE, AND COMPANY, OWNERS OF THE STEAMER "SAXON," PLAINTIFFS IN ERROR,

vs.

JOSEPH J. THOMPSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED APRIL 2, 1883.

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INDEX.

	Original.	Print.
Transcript from superior court of Chatham County	1	1
Bill of exceptions	1	1
Agreed statement of facts	2	1
Assignment of errors	6	2
Judge's certificate to bill of exceptions	7	3
Clerk's certificate to bill of exceptions	9	3
Transcript from justice's court	10	4
Affidavit of J. J. Thompson for attachment	10	4
Bond of J. J. Thompson *et al.* for attachment	10	4
Attachment	2	5
Subpœna and return	13	5
Bond of Spraigue, Soule, & Co. on attachment	14	5
Agreement as to trial, &c.	15	6
Bill of Thompson against Spraige, Soule, & Co.	16	6
Bond on appeal	17	7
Judgment	18	7
Justice's certificate	19	7
Agreed statement of facts	19	7
Opinion	23	9
Judgment	42	15

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	Original.	Pri
Bond on appeal	44	
Clerk's certificate	45	
Judgment	46	
Opinion	47	
Petition for writ of error	55	
Writ of error	59	
Citation	62	
Service of citation	63	
Bond	64	
Clerk's certificate	66	

1 *Appeal.*

In Chatham Superior Court. June Term, 1882.

J. J. THOMPSON *vs.* SPRAIGUE, SOULLE & Co.

Be it known that on the tenth day of June, 1882, there came on to be heard in the superior court of Chatham county, at the June term thereof, the above-stated cause, which was an appeal from a justice's court based upon an attachment and an account filed therewith, which said attachment, account, and appeal papers are of file in said superior court in said cause as part of the record therein.

Be it known that said appeal case was submitted to the judge of said court, Hon. Henry B. Tompkins, upon an agreed statement of facts without the intervention of a jury, which said agreed statement of facts is of file in said cause as part of the record therein, and the following is a correct copy of said facts, and is all the evidence submitted in said cause:

2 *Copy agreed upon. Statement of Facts.*

In Superior Court of Chatham County.

J. J. THOMPSON *vs.* SPRAIGUE, SOULLE & Co.

Appeal from Justice's Court.

It is agreed between the parties to the above-entitled cause that the same shall be tried on appeal in the superior court of Chatham county, as the following state of facts before the court, without a jury: That the steamship Saxon is a licensed coastwise steam vessel engaged in the trade between Philadelphia and Savannah, and belongs to Spraige, Soulle & Co.; that on the 9th day of August, 1881, she was engaged in a voyage from Philadelphia, Pennsylvania, to Savannah, Georgia, and that S. W. Snow was her master; that said master was duly licensed, under title 52 of the Revised Statutes of the U. S., as master of a steam vessel, and as a pilot also, but that his certificate as pilot did not include Tybee bar and Savannah river, but that his certificate was for the Atlantic coast, and
3 that his certificate as master and pilot was issued last November.

That said steamship "Saxon" was spoken by plaintiff off Cape Romain on the ninth day of August, 1881, and his services were tendered to said master of said steamship "Saxon" as a pilot for Savannah river and Tybee bar, and that at the time his said services were offered there was no pilot for Tybee bar or Savannah river on board said steamship, and that said plaintiff was the first pilot who spoke said vessel on her said trip to Savannah. It was further admitted by counsel at the hearing that Philadelphia was the home port of said steamer "Saxon," and that the captains and masters of the Ocean Steamship Company steamers whose home port is Savannah have each a license from the United States authorities at Savannah to pilot their vessels up and down the Savannah river over and from the bar to the city; that said pilot was

duly commissioned by the commissioners of pilotage for the Savannah river and Tybee bar, and was also duly commissioned
4 by the U. S. inspectors to conduct steam vessels over Tybee bar and up Savannah river and within that limit; that Thompson went out to meet the "Saxon," being advised of her departure from Philadelphia, and his services were refused; that the defendant had procured the services of Walter W. Smith, a pilot who was duly licensed for the Savannah river and Tybee bar by the commissioners of pilotage, and who was also duly licensed by the U. S. to conduct steam vessels over Tybee bar and up Savannah river, and had notified the captain of said steamship "Saxon" to stop at the Martin's Industry lightship and take said Walter W. Smith on board to pilot said steamship over Tybee bar and up Savannah river; that said Walter W. Smith was employed as the regular pilot of steamer "Saxon" and was under pay from time said vessel left Phila.; that said pilot was taken on board said steamship on tenth day of August off the Martin's Industry lightship, and he piloted the said vessel to the city of Savannah and has continued in the employ of said vessel from that time until the present time as pilot.
5 That Cape Romain is on the South Carolina coast north of Charleston, and that Martin's Industry lightship is north of Tybee bar and off the South Carolina coast. That Walter W. Smith was in Savannah when the Saxon left Phila., and was not piloting the Saxon when she was spoken by the pl'ff, but met her afterwards and was taken. That said steamship Saxon drew seventeen ft. six inches of water, and that according to rates of pilotage for Tybee bar and river of Savannah $93.17 was proper charge for piloting a vessel of such draft up to Savannah city.

(Signed) J. J. ABRAMS, *Pl'ff's Att'y.*
LAWTON & CUNNINGHAM,
Def'ts Att'ys.

Be it known that said agreed statement of facts was read to the court, argument was had thereon, and the decision of the court was reserved, and that on June 16th, 1882, the court rendered its decision in favor of the defendants, and that said decision being duly filed was, on June 17th, 1882, made the judgment of said
6 court, which said decision & judgment are of file in said cause as part of the record thereof.

Be it known that upon the filing of said decision and the rendering of said judgment said defendant then and there excepted, and now excepts and alleges as error:

First. That said judgment is contrary to law.

Second. That it is contrary to the evidence.

Third. That the entire decision is contrary to the law and the facts.

Fourth. That the court erred in deciding that § 1512 of the Code of Georgia was and is unconstitutional.

Fifth. That the court erred in deciding as it did the 5th ground, *i. e.*, that vessels of whatever character, size, or nationality, other

than steam vessels engaged in coasting trade, are not compelled by any law, State or Federal, to accept or employ the services of any pilot upon entering or leaving any port, harbor, bay, road, or inlet in the State of Georgia.

7 Sixth. Because the court erred in deciding matters not necessary to decide, in order to decide the cause as set forth in the fourth ground.

Seventh. Because the court erred in not giving judgment for the plaintiff for the principal, interest, and costs.

Eighth. That the court erred in its entire decision, and now, on the 26th day of June, 1882, being ten days from the time of filing said decision and nine days from the time of entering judgment thereon, comes the said J. J. Thompson, and presents this his bill of exceptions to said judgment and decision, and prays the same may be certified and signed as required by law.

J. J. ABRAMS,
Att'y for Pl'ff.

I certify that the foregoing bill of exceptions is true and correct, and contains, in connection with the record and the written opinion finding for the defendants by the court on the 16th June, 1882, all the evidence material to a clear understanding of the errors complained of.

8 And the clerk of the superior court of Chatham county is hereby ordered and required to make out a complete copy of the record of said cause, and certify the same as such, and cause the same to be transmitted to the September, 1882, term of the supreme court of Georgia that the errors complained of and alleged to have been committed may be considered and corrected.

June 28th, 1882.

HENRY B. TOMPKINS, *Judge.*

Due and legal service of the granting, signing, filing, certifying of the foregoing bill of exceptions and writ of error acknowledged, and copy received; all other and further service waived and acknowledged June 28th, 1882.

LAWTON & CUNNINGHAM,
Att'ys for Spraigue, Soulle & Co.

9 GEORGIA, *Chatham County:*

CL'K'S OFFICE SUPERIOR COURT.

I, Charles S. Hardee, clerk of the superior court of the county of Chatham, certify the above and for-going instrument of writing to be the true, original bill of exceptions in the case of J. J. Thompson *vs.* Spraigue, Soulle & Co., heard at the June term, 1882, of Chatham superior court, to wit: On the 10th day of June, 1882, by a judgment of court in favor of defendant. And I further certify that the said June term, 1882, as appears from the minutes, is still in session.

In testimony whereof, I hereunto set my official signature and the seal of the said court, at Savannah, this fifth day of July, 1882.

C. S. HARDEE,
Cl'k S. C. C. C.

10 STATE OF GEORGIA, *Chatham County:*

Before me, M. Frank Molina, a justice of the peace of the 3rd G. M. district in and for said county, personally appeared J. J. Thompson, who, being duly sworn, deposes and says: That Saraigue, Soule & Co., composed of certain Spraigue and Soule and certain parties unknown to deponent, are indebted to deponent in the sum of ninety-three dollars and sixteen cents; that the said firm of Spraigue, Soule & Co. reside out of the State of Georgia.

J. J. THOMPSON.

Sworn to before me, at Savannah, this 20th day of August, A. D. 1881.

M. FRANK MOLINA,
J. P., 3rd G. M. District C. C., Ga.

STATE OF GEORGIA, *Chatham County:*

We, J. J. Thompson, principal, and Charles G. Makin, surety, acknowledge ourselves bound unto Sprague, Soule & Co. in the
11 sum of one hundred and eighty-eight dollars, subject to the following conditions: That the said J. J. Thompson, principal, is seeking an attachment against the said Spraigue, Soule and Co., which is now about to be sued out returnable to the October term, 1881, of the 3rd G. M. district justice's court of the county aforesaid.

Now, if the said J. J. Thompson shall pay all damages that the said Spraigue, Soule and Co. may sustain, and also all costs that may be incurred by him in consequence of suing out such attachment in the event that the said J. J. Thompson shall fail to recover in said case, then this bond to be void; otherwise of full force.

J. J. THOMPSON. [L. S.]
CHAS. G. MAKIM. [L. S.]

Executed in presence of me, this 7th day of Sept., A. D. 1881.

M. FRANK MOLINA,
J. P., C. C., Ga.

Affidavit and bond filed this 7th day of Sept., 1881.

M. FRANK MOLINA,
J. P., C. C., Ga.

12 STATE OF GEORGIA, *Chatham County:*

To all and singular the constables of —— State:

You are hereby commanded to attach and seize so much of the property of Spraigue, Soule & Co. as will make the sum of ninety-three $\frac{16}{100}$ dollars and all costs, and also to serve such summons of garnishment as may be placed in your hands, and that you make return to this attachment, with your actings and doings entered thereon, to the October term, 1881, of the justice's court, 3rd G. M. district of said county, to which court this attachment is hereby made returnable. Hereof fail not.

Witness my hand and seal, this 7th day of Sept., 1881.

M. F. MOLINA, [L. S.]
J. P. 3rd G. M. Dist. C. C., Ga.,

CONSTABLE'S OFFICE, C. C., GA., SAVANNAH, *8th Sept.*, 1881.

I have this day levied upon the steamship "Saxon" as the property of defendants, and pointed out by pl'ff's attorney.

The return of L. B. Endres, C. C., Ga.

13 Justice's Court, 3rd G. M. District. Oct. Term, 1881.

J. J. THOMPSON *vs.* SPRAIGUE, SOULE & CO.

To Spraigue, Soule & Co.

GENTLEMEN: You will please produce and have at the trial of the foregoing cause the bill of sale, register, license, and enrollment of the steamship "Saxon," the log book of said ship kept by her officers during the time that said vessel has been running to Savannah.

Resp. yours, J. J. ABRAMS,
Pl'ff's Att'y.

Sept. 8th, 1881.

Filed this 8th Sept., 1881. M. FRANK MOLINA,
J. P., C. C., Ga.

Due and legal service of the within subpœna acknowledged and copy received, this 8th Sept., 1881.

CUNNINGHAM AND LAWTON,
Def'ts' Att'ys.

14 GEORGIA, *Chatham County:*

Know all men by these presents that we, Spraigue, Soule and Co., of the State of Pennsylvania, principals, and Wm. Hunter, security, are held firmly bound unto J. J. Thompson in the sum of two hundred dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hand and seal this 9th day of September, A. D. 1881.

The condition of the above obligation is such, that whereas an attachment, returnable to the October, 1881, term of the justice's court, 3rd dist. G. M., in favor of said J. J. Thompson against said Spraigue, Soule & Co. has been levied upon the steamship "Saxon," the property of defendants: Now, should the said Spraigue, Soule & Co. pay to the said J. J. Thompson the amount of the judgment and costs which he may recover in said case, then this obligation to be void.

15 SPRAIGUE, SOULE & CO.,

By their att'ys-at-law:

CUNNINGHAM & LAWTON. [L. S.]
WH. HUNTER. [L. S.]

Witness:

M. FRANK MOLINA,
J. P., C. C., Ga.

Filed this 9th Sept., 1881.

M. FRANK MOLINA,
J. P., C. C., Ga.

Justice's Court, 3rd G. M. Dist. Oct. Term, 1881.

J. J. THOMPSON *vs.* SPRAIGUE, SOULE & Co.

In the above-stated cause it is agreed between the representative counsel to try said cause on Wednesday, 19th of October, 1881, at 4 o'clock p. m.

That the ownership of the vessel is admitted to be in the defendants. That pl'ff duly tendered his services as pilot to said vessel when the vessel was bound to Savannah. That his services were refused; and that after such refusal the master of the Saxon took on board as pilot another pilot, who brought the vessel up.

That the vessel is a licensed steam vessel in the coasting
16 trade between domestic ports.

CUNNINGHAM & LAWTON,
Att'ys for Defendants.

J. J. ABRAMS,
Att'y for Plaintiff.

Filed this 10th Oct., 1881.

M. FRANK MOLINA,
J. P., C. C., Ga.

Mess. Spraige Soule & Co., owners S. S. Saxon, to J. J. Thompson, Dr.

To inward pilotage due me on steamer Saxon on 9th Aug., 1881, said vessel being spoken by me while she was bearing towards the port of Savannah, and my services being offered to her as such pilot outside of Tybee Bar, and such services having been refused, said vessel having arrived in port piloted by another Savannah pilot, who spoke said vessel and entered on the discharge of his duties as pilot on the same day and subsequent to my speaking said vessel.

Full rate of refused pilotage, $93.76, 17 ft. dr'ft.

17 *Judgment for Pl'ff* for *and Costs of Suit.*

In the Justice Court of Justice M. F. Molina.

J. J. THOMPSON *vs.* SPRAIGUE, SOULE & Co.

The defendants, being dissatisfied with the judgment of the court rendered in the above cause, and having paid all costs and demanded an appeal according to the statute in such cases made and provided, bring Wm. P. Hunter and tender him as their security, and the said defendants, Spraige, Soule, & Co. and Wm. P. Hunter, acknowledge themselves bound unto J. J. Thompson for the eventual condemnation money in said cause and all future costs.

In testimony whereof, the said Spraige, Soule & Co. and ——— ——— have hereunto set their hands and seals, this 21st day of October, 1881.

SPRAIGE, SOULE & CO., [L. S.]
By their att'ys-at-law:
CUNNINGHAM AND LAWTON.
WM. HUNTER. [L. S.]
WM. P. HUNTER. [L. S.]

In presence of—
B. A. DEMARK, *Not. Pub., C. Co., Ga.*

18 I certify that the defendants in the above-entitled cause have paid all costs, and given bond and security upon appeal, in accordance with the statute in such cases made and provided.
Amount of costs paid, thirteen dollars — cents.

M. F. MOLINA,
J. P., C. C., Ga.

I do hereby certify that all the foregoing papers are all the papers of file in the foregoing cause.

M. F. MOLINA,
J. P., C. C., Ga.

This cause having been returnable to the October term, 1881, and having been set for trial on this day, came on duly to be heard, and after evidence and argument heard in the cause of J. J. Thompson *vs.* Spraige Soule & Co., judgment is rendered for the plaintiff against the defendants and against Wm. Hunter, the surety on the replevy bond, for ninety-three $\frac{16}{100}$ dollars, with interest from August 10th, 1881, and costs of suit.
This 19th Oct., 1881.

M. F. MOLINA,
J. P., C. C., Ga.

19 SAVANNAH, 21*st Oct.*, 1881.

I do hereby certify that bond has been given and all costs have been paid by defendants, as required by the statu-es in such cases made and provided, and that these are all the papers in the foregoing case.

M. F. MOLINA,
J. P., C. C., Ga.

Filed in office, Nov. 12, 1881.

J. P. CARR,
Dep. Clk S. C. C. C.

In Superior Court of Chatham County.

J. J. THOMPSON *vs.* SPRAIGUE, SOULE AND CO.

Appeal from Justice Court.

It is agreed between the parties to the above-entitled cause that the same shall be tried on appeal in the superior court of Chatham county on the following state of facts and before the court without a jury:

20 That the steamship Saxon is a licensed coastwise steam vessel, engaged in the trade between Philadelphia and Savannah, and belongs to Spraige Soule and Co. That on the ninth day of August, 1881, she was engaged in a voyage from Philadelphia, Pennsylvania, to Savannah, Georgia, and that S. W. Snow washer master; that said master was duly licensed under title (LII) (52) of the Revised Statutes of the United States as master of a steam vessel and as a pilot also, but that his certificate as pilot did not include Tybee bar and Savannah river, but that his certificate

was for Atlantic coast, and that his certificate as master and pilot was issued last November; that said steamship "Saxon" was spoken by said plaintiff, off Cape Romain, on the ninth day of August, 1881, and his services were tendered to said master of said steamship "Saxon" as a pilot for Savannah river and Tybee bar, and that at the time his said services *was* offered there was no pilot for Tybee bar or Savannah river on said steamship, and that plaintiff
21 was the first pilot who spoke said vessel on her said trip to Savannah, and that said pilot was duly commissioned by the commissioners of pilotage for the "Savannah river" and "Tybee bar," & was also duly commissioned by the United States inspectors to conduct steam vessels over Tybee bar and up Savannah river and within that limit; that Thompson went out to meet the "Saxon," being advised of her departure from Philadelphia, and his services were refused; that defendants had procured the services of W. W. Smith, a pilot, who was duly licensed for the Savannah river and Tybee bar by the commissioners of pilotage, and who was also duly licensed by the United States to conduct steam vessels over Tybee bar and up Savannah river, and had notified the captain of said steamship "Saxon" to stop at the Martin's Industry lightship and take said Walter W. Smith on board to pilot said steamship over Tybee bar and up Savannah river; that said Walter W. Smith was employed as the regular pilot
22 of steamship "Saxon" and was under pay from time said vessel left Philadelphia; that said pilot was taken on board said steamer on the 10th day of August off the "Martin's Industry lightship," and he piloted the same vessel to the city of Savannah and has continued in the employ of said vessel from that time until the present time as her pilot; that Cape Romain is on the South Carolina coast north of Charleston, and that "Martin's Industry lightship" is north of "Tybee bar" and off South Carolina coast; that Walter Smith was in Savannah when the Saxon left Philadelphia, and was not piloting the "Saxon" when she was spoken by the plaintiff, but met her afterwards and was taken; that said steamship "Saxon" drew seventeen feet six inches of water, and that according to rates of pilotage for Savannah river and Tybee bar ninety-three and seventeen one hundredths dollars ($93.17) was a proper charge for piloting a vessel of such draft up to Savannah city.

J. J. ABRAMS, *Pff's Att'y.*
LAWTON & CUNNINGHAM,
Def'ts Att'ys.

23 It was further admitted by counsel at the hearing that Philadelphia was the home port of the steamer "Saxon" and that the captains and masters of the Ocean Steamship Company's steamers, whose home port is Savannah, have each a license from the United States authorities at Savannah to pilot their vessels up and down the Savannah river over and from the bar to the city.

Attachment for Pilot Services in Justice's Court and Appeal from the Judgment of the J. P.

Superior Court, Chatham County. June Term, 1882.

J. J. THOMPSON *vs.* SPRAIGUE, SOULE & Co.

This action was begun on the 8 Sept'r, 1881, by attachment in magistrate's court for $93.16, alleged to be due J. J. Thompson as a licensed pilot of the port of Savannah, under the laws of the
24 State and of Congress, and for the amount of inward pilotage claimed upon the coastwise steamer "Saxon," plying upon the home port of Philadelphia and Savannah. The attachment was sued out against the def'ts as the owners of said steamer and as non-residents of this State. Judgment was given by the justice for the pl'ff, Thompson, for the amount claimed. Upon the hearing of the appeal the case is submitted by consent to be decided by the court without a jury and upon an agreed statement of facts. The facts agreed upon are substantially: That the steamer Saxon is a licensed coastwise vessel engaged in trading between Philadelphia and Savannah and belongs to the def'ts, who are residents of Penn. That in August, 1881, she was commanded by one S. H. Snow, who was duly licensed as master and pilot under title 52 of the Revised Statutes of the United States, the said certificate as pilot & master being issued in November, 1880, by the board of inspectors at Philadelphia for the Atlantic coast and did not include *eo*
25 *nomine* Tybee Bar and the Savannah river. That on 9th of August, 1881, as said steamer was proceeding from Philadelphia to Savannah she was spoken by the pl'ff off Cape Romain on the South Carolina coast, who then tendered his services to the said master of said steamer "Saxon" as a pilot for Tybee Bar and the Savannah river, and that pl'ff was the first pilot who spoke said vessel on her said trip to Savannah, and that pl'ff was duly licensed both by the pilot commissioners of the State and by the United States inspectors at the port of Savannah as a pilot for the "Savannah river" and "Tybee Bar" to conduct steam vessels over said bar and up and down said river. That pl'ff being apprised that said vessel had sailed from Philadelphia for Savannah went out to meet her. That the def'ts had procured the services of one Walter W. Smith, who was also duly licensed both by the State authorities and by the United States inspectors to conduct steam vessels over "Tybee Bar" and up and down "Savannah river," and that said defendants
26 had notified the said master of said steamship to stop at "Martin's Industry lightship" (which is between said Cape Romain and Tybee bar, and there to take said pilot, W. W. Smith, on board to pilot said steamer Saxon over Tybee bar and up the Savannah river, and that said Smith was so taken on board on the 10th of August, 1881, and did pilot the said vessel over the bar and up the Savannah river. And that the said Smith was in the pay of said defendants from the time the said vessel left Phila., and was regularly employed by said defendants in August last, and had so continued to be employed as the pilot of said vessel in and out of Savan-

nah on her regular trips. That Smith was in Savannah when the vessel left Phila., and met her at "Martin's Industry lightship" the day after she was spoken by plaintiff at sea. That according to rates of pilotage established by the pilot commissioners of Savannah under the State laws the proper charge for piloting said
27 steamer inward over the bar and up to Savannah was $93.17, the said vessel drawing 17 ft. and 6 inches. That Phila. was the home port of said steamer, and that the captains and masters of the steamers of the Ocean Steamship Company of Savannah, whose home port is Savannah, have each a license from the State and from the United States authorities at Savannah to pilot their vessels over the bar at Tybee and up and down the Savannah river to this city. The counsel for pl'ff contended that under the facts he was entitled to a judgment by reason of the law set forth in the code of Georgia, beginning with § 1504. That under § 1511 plaintiff had offered his services to the defendants' vessel, and that under § 1512 he was authorized to sue for and collect from the defendants the full rates of pilotage established by law for such vessel, "which rates are admitted would be the sum sued for under the provisions of the rules made by the commissioners of pilotage, appointed by
28 the authorities of the city of Savannah for the bar of Tybee and the Savannah river."

No point was made at the argument by the counsel for def'ts against the right of pl'ff to sustain this suit, except, because, under § 4444 of the Revised Statutes of the United States, p. 866: Firstly, the master of the Saxon having been licensed by the authorities at Phila. as a pilot for the Atlantic coast had the authority to bring the vessel over Tybee bar and up the Savannah river himself; and, secondly, that the defendants had the full, legal right to employ Walter W. Smith to act as pilot for their vessel, as set forth in the agreed statement of facts. No reference was made to the dissimilarity in the provisions of §§ 1512 and 1517 of the Code of Georgia. In 1512 it is set forth that "the master or commander of a ship or vessel * * * who refuses to receive a pilot on board shall be liable * * * to pay the first pilot who may have offered his services outside the bar * * * the full rates of pilotage established by law for said vessel." And in the section 1517 is set forth that "A pilot bringing a vessel into port shall be entitled to his fees,
29 which may be demanded and recovered in any court having jurisdiction from the owner, master, or consignee of the vessel." For refusal to take the first pilot offering his services such pilot may recover what his fees would have amounted to from the "commander" or "master" of the vessel, and then only it would seem when such master refuses altogether to "receive a pilot on board." By a strict construction of this section it appears that the master of a vessel is not bound to take the first pilot who offers, but is bound to pay such first pilot if he shall not take any pilot at all. Construing these words, § 1512 in connection with § 1511, which says, "Every pilot boat cruising or standing out to sea must offer the services of a pilot to the vessel nearest the bar," it would appear that it is not the policy of the law to offer a premium to pilots to go so far out

that they run the risk of missing an incoming vessel and of adding to their own chances of being lost. It could scarcely have been the design of the Legislature to preclude the masters of vessels from ex-
30 ercising their discretion and judgment in selecting a pilot, provided they took some licensed pilot to steer the vessel into port. If no pilot was chosen then the pilot who first offered his services in accordance with law has the right to recover what those services would have come to if they had been accepted. Suppose a pilot should offer his services to one of a number of ships which was not the one nearest the bar, and because it was more profitable to bring in that ship rather than another nearer the bar, how then could any such pilot derive any rights as against the master of such ship even if no pilot should be taken? If this view of the law is correct the case is at once disposed of in view of the defendants. By § 1517 of the Code the right to recover against the owners of a vessel, or to subject the vessel itself, is made complete only when the pilot has actually performed the service by bringing the vessel into port. But supposing that the first pilot offering has a claim against the owners and the vessel if his services shall be refused by the master, even tho' the vessel afterwards takes some other licensed pilot; then let
31 it be seen if the pl'ff can recover in view of the special and peculiar wording of section 1512 of the Code, without just yet considering the bearing that sec. 4444 of the Revised Statutes has upon this case. By this section of the Code of Georgia all vessels—foreign, domestic, coasters, sail, and steam—are made amendable to the pilot laws of the State of Georgia, except coasters in this State, and between the ports of this State and those of South Carolina, and between the ports of this State and those of Florida." Without reference to the ownership of the vessels, those engaged in the coasting trade exclusively within the waters of this State, and those coasting between this State and either South Carolina or Florida, are entirely exempted from the operations of the pilot laws as enacted by the State of Georgia. A vessel whose home port is Charleston or Jacksonville can trade between either of those ports and the ports in this State without having to take and pay for a pilot; but a vessel (as in this case) whose home port is Phila., it is contended
32 by pl'ff, cannot enter any portion in Georgia without having to take and pay for a pilot regularly licensed for such Georgia port by the State authority. The home port of a vessel is presumed to be the place of the residence of its owners; and in this case it affirmatively appears that the defendants reside in Penn.

Par. II of section 2 & art. 4 of the Constitution of the United States recites that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." By sec. 1512 of the Code of Georgia a vessel owned in Georgia and in the coasting trade of this State is relieved from the penalties attaching to the refusal to take a pilot by the masters of vessels owned in Penn. or New York, and engaged in coasting between this State and any other State, except South Carolina and Florida. So if a vessel be owned in South Carolina or Florida and engaged in coasting between this State and those States or either of them no pilot

need be taken. The fact that no reference is made to owner-
33 ship, provided the vessels be engaged in coasting in this State,
or between this State and South Carolina or Florida, cannot alter the case when it is kept in mind that the home port is presumed to be the place of ownership. For if this were not so, then the citizen of Penn. or North Carolina who used his vessel to coast between Phila. or Wilmington and Savannah would be deprived of certain privileges and immunities in the use of his property, which, by the laws of this State, are recorded to the citizen of Georgia, South Carolina, or Florida, who would use their vessels as coasters between the ports of their States and Savannah. It is not to be forgotten that under the navigation laws of the United States only vessels owned by citizens of the U. S. are allowed to engage in the coasting trade. By the first clause of the 14th amendment to the Constitution of the U. S. "citizens of the various States in the Union were first declared to be citizens of the United States." And it is there further provided that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State
34 * * * * deny to any person within its jurisdiction
the equal protection of the laws." If the 1512 section of the Code of Georgia undertakes to impose certain burdens upon citizens of the United States who sail their vessels from Phila. to Savannah, which it does not impose upon citizens of the U. S. who sail their vessels from port to port in Georgia or from the ports of South Carolina and Florida to the ports of Georgia, then such law must be unconstitutional, null, and void. And the conclusion is that the compulsory pilot laws of Georgia are not of force or binding upon any coasting vessel propelled either by sail or steam. If this were not correct still Congress has put the matter beyond question by an act of 13th of July, 1866, to be found in the Revised Statutes, § 4237. It is there enacted that "no regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half pilotage between vessels sailing between the ports of one State and between vessels sailing
between the ports of different States, * * * * and all
35 existing regulations and provisions making any such discrimination are annulled and abrogated." This settles the illegality of that portion of the pilot laws of Georgia which discriminate in favor of our own State or of South Carolina and Florida as against the other States of the Union, even if it be not conceded that the whole of section 1512 is obnoxious to the Constitutional prohibitions above indicated. Section 4235 of the Revised Statutes recites that: "Until further provision is made by Congress all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the State respectively, wherein such pilots may be, or with such laws as the States may respectively enact for the purpose." Nothing is better settled than that a State law, however constitutional, which relates to inner State commerce must yield to an enactment of Congress when Congress chooses to act. And it is equally well settled that

a State law in controvention of the Federal Constitution is of no binding force in either State or Federal courts. Clause 3 of
36 sec. 8 of the first article of the Federal Constitution, in enumerating the special powers of Congress says: "The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

There can be no question but that sections 4444 and 4237 of the Revised Statutes of the United States are within the power thus conferred upon Congress, and in so far as they are in conflict with, override and annul any State law relating to a similar subject.

The navigation and management and piloting of steam vessels coasting along the oceans or employed upon the rivers and great lakes the general Government has seen proper specially to provide for. To be authorized to pilot any such steam vessel used in the coastwise trade a pilot need be licensed by no other authority than the inspectors of hulls and boilers, who are selected and employed by the Government of the U. S. at the various collection districts set forth in section 4414 of the Revised Statutes.

37 But it would seem a most strained construction to hold that a person licensed as a pilot of coastwise steam vessels for the Atlantic coast at Phila. by the board of inspectors for that collection district is, by virtue of such license, also authorized to pilot a steam vessel over Tybee bar and up and down the Savannah river without any examination by or license from the proper authorities at the collection district of Savannah. Indeed, the statement of the proposition refutes; for why have inspectors at the various ports in different parts of the Union, whose duty it is to examine and license pilots for steam vessels engaged in the coasting trade, unless it be that such inspectors shall pass upon and certify to the special fitness of those who undertake to pilot vessels to and from the special ports? To hold that the inspectors for the collection districts of New York, or Portland, or Phila., or Balt'o, or Norfolk can skillfully examine and pass upon the qualifications for a pilot at the port of Savannah is to hold an absurdity. It may be that the local inspectors at Phila. or elsewhere undertake to authorize a master of a coasting
38 steamer to pilot his vessel into Savannah, but there is nothing in the statutes which will justify such exercise of power. Therefore it cannot be conceded that the master of the said steamer Saxon, having only a license as a pilot from the inspectors at Phila., was authorized to act as a pilot for Tybee Bar and Savannah river. But it is considered that the employment of Walter W. Smith by the defendants was entirely in accordance with law, and this even if the said section 1512 of the Code of Ga. was valid and binding, for as has been shown the obligation was at most only that the master of a vessel shall take some pilot and not the first one who offerred.

As has been seen Congress has not exercised its power in the matter of making rules for the piloting of vessels, either foreign or domestic, which come to and depart from the various ports of this country, except in the piloting of steam vessels engaged in the coasting trade. Now, as at the formation of the Government, all other

vessels fall under the pilot regulations established by the various States, provided such State regulations be not in conflict with
39 some special law of Congress or with the organic law of the Federal Government. And however reluctant the courts may be to declare void any act of the State Legislature, yet such declaration is clearly the duty of a court when an act is manifestly in conflict with the Constitution of the United States. And a law declared to be unconstitutional is as if it were not upon the statute book. It can have no efficacy to authorize or legalize any action of any person.

The result of this investigation is—

1. That the plaintiff has no cause of action against the defendants under either of the sections 1512 or 1517 of the code of Georgia. And this is held even if the said § 1512 is constitutional or was not annulled by § 1237 of the Revised Statutes of the United States, because the said steamer Saxon did take a pilot authorized by section 4444 of the Revised Statutes to pilot the vessel.

2. That the said section 1512 of the code of Ga. is unconstitutional and void, and that neither the owner nor masters nor consignee of any vessel nor is any vessel itself liable in any
40 manner whatever to any pilot under the provisions of sections 1512 and 1517 of the said code; and this applies to all coasting vessels of every kind and description, whether propelled by sail or by steam or by both; and the better opinion would seem to be that this ruling applies also to all American ships coming into the waters of Georgia, whether from domestic or foreign ports. For to hold otherwise would be to place an American vessel coming from a foreign port at a disadvantage as compared with an American vessel engaged in the coasting trade. It therefore is held to be law that American vessels other than coastwise steamers can come into and depart from the ports of this State without being compelled by State or Federal authority to engage or accept the services of a pilot of any kind; for if coasters of this State are exempt from taking pilots then all coasters of each of the States are likewise exempt; and, as only American vessels can be coasters, then all American vessels must be allowed the same privileges and immunities under the laws of Georgia as are allowed
41 any special class of American vessels.

3rd. That American steam vessels engaged in the coasting trade can be piloted by their masters or mates, provided they shall have been licensed as pilots by the inspectors of the collection district in which the ports are situated.

4th. That such steam vessels so engaged in the coasting trade are not compelled to be piloted by any one who has received a license from any board of pilot commissioners, at any port in Ga., appointed by the State authorities, but are compelled to be appointed by some one duly licensed or authorized by the inspectors of the collection district of the port so entered by such vessel.

5th. That vessels, of whatever size, character, or nationality, other than steam vessels, engaged in the coasting trade are not compelled by any law, State or Federal, to accept or employ the services of any

pilot upon entering or leaving any port, harbor, bay, road, or inlet in the State of Georgia.

42 Whereupon it is considered and ordered that judgment be rendered for the defendants, as if upon the verdict of a jury and that the plaintiff do pay the costs of this court and of the court below, for which execution may issue, this 16 June, 1882.

HENRY B. TOMPKINS, *Judge.*

Filed in office June 16th, 1882.

J. K. P. CARR,
Dep. Clk S. C. C. C.

In Superior Court of Chatham County.

J. J. THOMPSON *vs.* SPRAIGUE, SOULE & Co.

Appeal from Justice's Court.

Afterwards, to wit, on the 16th day of June, 1882, before the judge of said court, came the within-named plaintiff, by his attorney within named, and said defendants also came by their attorneys, within named, and said case being submitted to the judge of said court on an agreed statements of facts, and said judge, on considering

43 said facts, says that judgment be rendered for the defendants as upon the verdict of a jury, and that the plaintiff do pay the costs of this court and of the court below, for which execution may issue.

Therefore it is considered that the said plaintiff take nothing by his said writ and that the said defendants go thereof without day, and that said defendants do recover against said plaintiff thirteen dollars costs expended by them in the said justice's court, as also for costs and charges aforesaid to the said defendants by the said court, now herewith its assent and increase adjudged; and the said plaintiff in mercy, &c.

HENRY B. TOMPKINS, *Judge.*

LAWTON & CUNNINGHAM,
Def'ts' Att'ys.

Filed in office June 17th, 1882.

_____, _____,
Dep. Clk S. C. C. C.

M'm folio 168.

Judgment signed and filed this 17th day of June, A. D. 1882.

J. K. CARR,
Dep. Clk S. C. C. C.

44 GEORGIA, *Chatham County:*

Whereas J. J. Thompson is about to file his bill of exceptions in Chatham superior court in the case of Spraige, Soule & Co. at the suit of J. J. Thompson, in which cause judgment was rendered for said Spraigue, Soule & Co., defendants, and which bill of exceptions is returnable to the September, 1882, term of the supreme court of

Georgia, and said Thompson desires to obtain a supersedeas in said cause by filing bond as required by section 4263 of the Code of Georgia: The said J. J. Thompson comes and brings J. H. Estill as surety; and they, the said J. J. Thompson, as principal, and J. H. Estill, as surety, acknowledge themselves, jointly and severally, bound unto the said Spraigue, Soule & Co. for the payment of the eventual condemnation money and all future costs in said cause.

In witness whereof the said principal and surety have hereunto set their hands and seals on this the 27th (twenty-seventh) day of June, 1882.

J. J. THOMPSON.
J. H. ESTILL.

In presence of—
C. S. HARDEE,
Clk S. C. C. C.

Attested and approved by—

C. S. HARDEE,
Clk S. C. C. C.

45 I certify that all costs which have accrued upon the trial of the case of J. J. Thompson *vs.* Spraigue, Soule & Co. have been paid by J. J. Thompson, plaintiff in error.

C. S. HARDEE,
Clk S. C. C. C.

Supersedeas bond filed in cl'k's office June 27th, 1882.

C. S. HARDEE,
Clk S. C. C. C.

GEORGIA, *Chatham County:*

I, Charles S. Hardee, cl'k of the superior court of Chatham county, certify the above and foregoing instrument of writing to be a true and complete transcript of the record in the case of J. J. Thompson *vs.* Spraigue, Soule & Co., heard at the June term, 1882, of Chatham superior court, to wit, on the 10th day of June, 1882, and determined at same term, to wit, on 16th day of June, 1882, by a judgment of court in favor of defendant. And I further certify that the said June term, 1882, as appears from the minutes, is still in session.

In testimony whereof I hereunto set my official signature and the seal of the said court, at Savannah, this fifteenth day of July, 1882.

C. S. HARDEE,
Clk S. C. C. C.

46 Supreme Court of the State of Georgia.

TUESDAY, *January* 30, 1883.

The honorable supreme court of Georgia met pursuant to adjournment.

Present: Their honors James Jackson, chief justice, and Mortin J. Crawford and Samuel Hall, associate justices.

The following judgment was rendered:

J. J. THOMPSON, Pl'ff in Error,
vs.
SPRAIGUE, SOULLE & Co., Def'ts in Error.

This case came before the court upon a transcript of the record from the superior court of Chatham county, and, after argument had, it is considered and adjudged by the court that the judgment of the court below be reversed, on the ground that the court erred in finding for the defendants on the agreed facts, it being the judgment of this court that plaintiff is entitled to recover on those agreed facts, and it is so ordered and adjudged.

47 *Opinion in the case of J. J. Thompson, Pl'ff in Error, vs. Spraigue Soulle & Co., Def'ts in Error.*

Supreme Court of the State of Georgia.

JACKSON, chief justice, delivering the opinion.

This suit was instituted by the plaintiff in error against the defendants for $93.16, alleged to be due plaintiff as a pilot for the port of Savannah, based on the refusal of the defendants, owners of the steamship Saxon, through the master of said steamer, as their agent, to receive said pilot and permit him to pilot the ship over Tybee bar and up the river to Savannah. By agreement of counsel the case was submitted to the court below without the intervention of a jury on an agreed statement of facts.

Whereupon judgment was rendered for the defendants, and the plaintiff excepted. The facts agreed upon are substantially: That the steamer Saxon is a licensed coastwise vessel engaged in trading between Philadelphia and Savannah, and belongs to the defendants, who are residents of Pennsylvania.

48 That in August, 1881, she was commanded by one S. W. Snow, who was duly licensed as master and pilot under title 52 of the Revised Statutes of the United States, the said certificate as pilot & master being issued in November, 1880, by the board of inspectors at Philadelphia for the Atlantic coast, and did not include *eo nomine* Tybee bar and the Savannah river.

That on the 9th of August, 1881, as said steamer was proceeding from Philadelphia to Savannah, she was spoken by the plaintiff off Cape Romain, on the South Carolina coast, who then tendered his services to the master of said steamer Saxon as a pilot for Tybee bar and the Savannah river, and that at the time such services were tendered there was no pilot on board the said steamer for the said Tybee bar and Savannah river, and that plaintiff was the first pilot who spoke said vessel on her said trip to Savannah, and that plaintiff was duly licensed both by the pilot commissioners of this State and the United States inspectors at the port of Savannah as a pilot for the "Savannah river" and "Tybee bar," to conduct

49 steam vessels over said bar and up and down said river.

That plaintiff being apprised that said vessel had sailed from Philadelphia for Savannah went out to meet her.

That defendants had procured the services of one Walter W.

Smith, who was also duly licensed both by the State authorities and by the United States inspectors to conduct steam vessels over Tybee bar and up and down the Savannah river, and that said defendants had notified the said master of said steamer to stop at Martin's Industry lightship (which is between said Cape Romain and Tybee bar), and there to take said pilot, W. W. Smith, on board to pilot said steamer Saxon over Tybee bar and up the Savannah river, and that said Smith was so taken on board on the 10th of August, 1881, and did pilot the said vessel over the said bar and up the said river, and that the said Smith was in the pay of said defendants from the time the said vessel left Philadelphia, and was regularly employed by said defendants in August last and has so continued to be employed as the pilot of said vessel in and
50 out of Savannah, on her regular trips; that Smith was in Savannah when the vessel left Philadelphia, and met her at Martin's Industry lightship by agreement the day after she was spoken by the plaintiff at sea; that according to rates of pilotage established by the pilot commissioners of Savannah under the State laws the proper charge for piloting said steamer inward over the bar and up to Savannah was $93.17, the said vessel drawing 17 feet and 6 inches; that Philadelphia was the home port of said steamer, and that the captains and masters of the steamers of the Ocean Steamship Company of Savannah, whose home port is Savannah, have each a license from the State's & United States authorities at Savannah to pilot their vessels over the bar at Tybee and up and down the Savannah river to this city.

Counsel for plaintiff contended that under these facts he was entitled to a judgment by reason of the law set forth in the Code of Georgia, beginning with section 1504; that under section 1511 plaintiff had offered his services to the defendants' vessel, and
51 that under section 1512 he was authorized to sue for and collect from the defendants "the full rates of pilotage established by law for such vessel," which rates are admitted would be the sum sued for under the provisions of the rules made by the commissioners of pilotage appointed by the authorities of the city of Savannah for the "bar of Tybee and Savannah river."

52 The amount involved is undisputed and of small consequence; but the principles ruled by the superior court are of vast importance to the port and pilots of Savannah, as well as to the commerce of the State and country; and the judgment of this court upon all of those principles so ruled has been earnestly invoked by the counsel, and is demanded by those public considerations.

1. If the Code of Georgia is unaffected by the Constitution and laws of the United States, is the plaintiff entitled to recover? The answer depends on the construction of sections 1512 and 1517 of the Code.

Section 1512 is as follows: "Any person, master, or commander of a ship or vessel bearing towards any of the ports or harbors of this State, except coasters in this State and between the ports of this State and those of South Carolina and between the ports of this

State and those of Florida, and who refuses to receive a pilot on board, shall be liable on his arrival in such port in this State to pay the first pilot who may have offered his services outside the bar, and exhibited his license, if demanded by the master, the full rates of pilotage established by law for such vessel."

Section 1517 declares that "a pilot bringing a vessel into port shall be entitled to his fees before her departure from port, to be paid in advance or security given for the payment, and on failure thereof he may refuse to carry the vessel out, and all fees for pilotage may be demanded and recovered in any court having jurisdiction from the owner, master, or consignee of the vessel; and if any licensed pilot shall ask or demand more fees for his service than are specified in the rates of pilotage, on due proof thereof before the commissioners he shall forfeit double the amount of such vessel's pilotage."

The question is, whether these sections, construed together, and in the light of other sections of the Code in the same article, give the pilot first offering his services the right to recover fees when another pilot who afterwards offered his services was received and conducted the vessel into port under a contract previously made with the vessel before she left Philadelphia to meet her at a point nearer Tybee bar?

If there had been no such contract could he recover? And does the contract, if made, alter his right?

First. In the absence of another's being engaged, when the plaintiff offered his services and he was refused, could he recover? Such appears to us to be the meaning of section 1512. A pilot was refused and thereupon the first who tendered his services was entitled to fees. The language of the statute is, "who refuses to receive a pilot on board;" then the first "who may have offered his services outside the bar" can recover. Certainly the master of the ship refused to receive a pilot in this case; certainly the plaintiff first offered his services; therefore it would seem that by the very letter of the section the plaintiff could recover though he did nothing but tender services. That this construction of the section would be clear, had not the master of the vessel received another pilot and been piloted over the bar and to Savannah by him must be admitted by all candid minds; but it is conceded that if the words stood alone, unsupported by other aids to construction, where another pilot was received and carried the vessel into port the construction would be doubtful.

But there are other sections which throw light upon these words. The preceding section 1511 enacts that "every pilot boat cruising or standing out to sea must offer the services of a pilot to the vessel nearest the bar." The pilot cannot elect among vessels which he will offer to serve; but by the same section "for each and every neglect or refusal, either to approach the nearest vessel, or to aid any vessel in sight showing signals of distress," he must pay a penalty of fifty dollars, and may lose his license at the option of the commissioners. If the pilot may not under such pains and penalties select which vessel he shall serve, shall the vessel select which pilot shall serve it? Ought not the duties and liabilities to be reciprocal,

and is the policy of our law otherwise? Did the State mean to give such advantages to the foreign vessel over her own hardy seamen? We hardly think so.

Again, section 1517, above set out, gives to the pilot bringing in a vessel the right to immediate payment of fees or security thereof before her departure, and on failure he may refuse to carry her out and yet recover all fees therefor; showing that he stands on a different footing from one who was rejected off the bar. The one may recover only for the refusal to receive him; the other for services actually received, in bringing in the ship and the tender of services to take her out. The two sections provide for totally distinct matters, so that we do not see how the case provided for in 1512 is dependent in any wise on 1517. By section 1513, he who brings the vessel in has the exclusive right to take her out; but he who was rejected as her pilot coming in has no such right to take her out.

Moreover, the policy of the law requires the construction we give the words—that policy is to engender among the pilots a laudable rivalry to venture beyond the bar or its immediate proximity, and thus to be ever ready to lend aid to vessels making for the port. Laws to the same effect as ours, perhaps some of them clearer in language, but in spirit alike, have been given the same construction in other States. Indeed, they are on the statute books of all the maritime States of the Union, and so far as we are informed have received the same construction, and upon the same broad view of commercial necessity for hardy, enegetic, and fearless pilots. Reward for adventure of all sorts creates its spirit. It is the soul of enterprise, and makes men fit for emergency in all avocations of life, especially those which demand exposure to dangers and death. See 5 Metcalf, Mass., 416–17; 2 Wall., 450–56, cited by plaintiff in error.

In the latter case the Supreme Court of the United States say, Mr. Justice Field delivering the opinion, "The claim to half pilot fees, it is true, was given by the statute, but only in consideration of services tendered. The object of the regulations established by statute was to create a body of hardy and skillful seamen, thoroughly acquainted with the harbor, to pilot vessels seeking to enter or depart from the port, and thus give security to life and property exposed to the difficulties and dangers of navigation. This object would be in a great degree defeated if the selection of a pilot were left to the option of the master of the vessel, or the exertions of a pilot to reach the vessel in order to tender his services were without remuneration. The experience of all commercial States has shown the necessity, in order to create and maintain an efficient class of pilots, of providing compensation, not only when the services tendered are accepted by the master of the vessel, but also when they are declined. If the services are accepted, a contract is created between the master and owner of the vessel and the pilot. * * * If the services tendered are declined, the half fees allowed are by way of compensation for the exertions and labor made by the pilot, and the expenses and risks incurred by him in placing himself in a position to render the services which, in a majority of cases, would be required."

It will be observed that it makes no difference as to principle that the California statute, then under consideration, gave only half fees, even if ours gives the whole to the tendering pilot. Really, however, as the rejected pilot had no right to take out the vessel, the fees sued for being only for bringing her in, are about one-half. We conclude, therefore, that under a fair construction of the statute in the light of surrounding sections of the Code, of its reason and spirit, of the policy of all maritime States, of the adjudications of other State courts, and of the Supreme Court of the Union, bearing on kindred legislation, that had there been no contract between the Saxon's owners and the pilot she received, the plaintiff would have been entitled to recover.

2. Does the prior contract of the Saxon to take a pilot at a point nearer the bar of Tybee affect the principles above announced so as to change the result? We cannot think so, because such prior engagement would have the effect to destroy the policy on which the statute rests, and emasculate its reason and spirit. What encouragement or incentive would the pilot have to venture on his dangerous cruise if liable to constant disappointment by reason of prior engagements of vessels to others. Much of that incentive to the real manhood of his hardy vocation would be gone, because much of the food which nourished it would be contracted away to others more fortunate, though, perchance, less adventurous and perservering. The reward would no longer be his whose valor combatted successfully the roughest sea, but his who by craft or cunning excelled him in the more placid business of contracts. The policy of the law of pilotage will not permit Jacob's lamb, cooked however sweetly, to despoil Esau's valor and venison of their just inheritance. See further on this and the preceding division of this general subject, cited by plaintiff in error, act of December 6, 1799. Crawford and Marbury's Digest, 572–3–4; Code, 1506; R. M. C.'s Reports, 238; 7 Wall., 53–102; U. S., 572; 7 Benedict's R., 386

3. We cannot see that the act of the master of the ship is other than the act of the owners in rejecting the proffered services of the plaintiff. The master is the agent of the owners when acting within the scope of his authority. If such were not the general law applicable to all cases it would be law here in this case, because the master was following instructions—carrying out the contract made with the other pilot by his principals. The liability is under the implied contract to employ and pay the pilot first offering, and is recoverable as such, and not as penalty. (7 Wallace, 67; 13 Ib., 236.)

4. Is the section unconstitutional? That is, in conflict with the Constitution of the United States? The learned judge in the court below so thought and put his adjudication of the point on the fact that "coasters in this State, and between the ports of South Carolina, and between those of Florida" are excepted from its operation. It is insisted that this exception is repugnant to paragraph 1, section 2, and article 4 of the Constitution of the United States, which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." But we cannot see that by this exception citizens of any State are ex-

cluded from owning or employing "coasters in this State, or between the ports of this State and those of South Carolina, or between the ports of this State and those of Florida. It will
53 not do to say that citizens alone of Georgia, South Carolina, and Florida own these coasters and are interested in them. It may be that many other citizens of the Union in other States are so interested and have such property. Certainly, they may if they wish. There is no prohibition against them in this respect. Nor will it do to urge that the place whence a vessel sails is the home of its owners. It may or it may not be true. Nor is there any presumption in law that the home port is presumed to be the place of citizenship of the owners of the vessel. The presumption would certainly be inapplicable to the steamers belonging to the Savannah Steamship Company, in so far as the real owners are concerned. And it is believed that from all the ports of the world of any consequence many ships are at home and out on the seas whose owners do not reside at the same port and are not citizens or subjects of the State or country wherein the port is located. Be this as it may, it would be contrary to all principle and precedent to hold an act of the General Assembly unconstitutional on a presumption, however strong. This court has often ruled that an act passed by a co-ordinate branch of the Government would be reluctantly declared unconstitutional by the judiciary, and its unconstitutionality must be made clearly to appear before it will be done. Where a statute has stood the test of almost a century of trial, it would be stretching judicial power beyond all precedent now to pronounce it unconstitutional, null, and void because it is presumed that the citizens of other States do not own vessels employed in coasting along the shores of Georgia, South Carolina, and Florida, and, therefore, that it is presumed that the General Assembly intended to debar them of the privilege of owning and sailing or propelling coasters along those coasts. The question is not, do they own them or are they so engaged in business? But can they so engage, or are they prohibited from so doing?

We are equally at a loss to find anything repugnant in section 1512 of the Code to the fourteenth amendment of the Constitution. It is quite certain that it was not in contemplation by the framers of this law in 1799 to come in collision with this amendment of yesterday, because "all citizens of the various States are declared to be citizens of the United States, and that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws," declared in the said fourteenth amendment, is now part of the Constitution, it does not appear to us that that instrument guards the equal rights of all citizens of the various States with stronger arm or greater emphasis, so far as the right of engaging in the coasting trade of Georgia, South Carolina, and Florida is concerned, than when the old covenant of the fathers proclaimed, with less volubility, but with singular clearness, that "the citizens of each State shall be entitled to all privileges and immunities of citizens of

the several States." If the Georgia law of pilotage be not repugnant to the old Constitution, it is very difficult to see wherein it is repugnant to the new amendment. See, cited by plaintiff in error, 12 Howard, 299; 13 Wall., 236; 102 U. S., 575; 2 Speer S. C., 769; 9 Wheat., 1; 1 Kent's Com., 437–8–9; 36 N. Y., 292; 5 Stat. at Large, 153; Revised Stat., 4236.

5. The question remains, is the Georgia law annulled by any act of Congress under the Constitution of the United States?

It is clear that Congress may, under that instrument, pass general laws upon this subject and annul the State laws thereon, because they are therein empowered to regulate commerce between the several States. Has it done so? Section 1512 of the Code, it is insisted by defendant in error, has been so annulled by enactments of the Congress codified in the Revised Statutes, 4237 and 4444. Those sections are as follows:

SEC. 4237. No regulation or provisions shall be adopted by any State which shall make discriminations in the rate of pilotage or half pilotage between vessels sailing between the ports of different States, or any discriminations against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated.

SEC. 4444. No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by this title, nor shall any pilot charges be levied by any such authority upon any steamer piloted as provided by this title; and in no case shall the fees charged for the pilotage of any steam vessel exceed the customary or legally established rates in the State where the same is performed. Nothing in this title shall be construed to annul or affect any regulation established by the laws of any State requiring vessels entering or leaving a port in any such State, other than coastwise steam vessels, to take a pilot duly licensed or authorized by the laws of such State, or of a State situated upon the waters of such State.

First, is section 1512 of the Georgia Code annulled by paragraph 4237 of the Revised Statues? If it makes any discrimination between vessels from the ports of different States in the rate of pilotage or half pilotage, it is annulled by the act of the 13th of July, 1866, of Congress, codified in said paragrah 4237, to the extent that it makes such discrimination. In our judgment, if 1512 of the Georgia Code exempts vessels sailing from ports in Florida and South Carolina altogether from pilotage fees whilst it exacts those fees from vessels sailing from ports of other States, it is discrimination in the rate of pilotage in the sense and spirit of the act of Congress.

The widest possible discrimination is made thereby between those two States and all other States of the Union. The discrimination is between no fees at all and full fees. The difference between naught and one hundred is greater than between any sum and one hundred, and the discrimination is, therefore, all the greater between

the two. Congress could not have intended that the vessels from one State should be exempted altogether and those of another be charged full rates. The meaning and sense of the statute puts all on an equality.

But the act of Congress of 1866, above cited, should be construed, we think, in connection with the act of the 2d of March, 1837, to be found in the paragraph of the Revised Statutes immediately preceding paragraph 4237, which is as follows:

SEC. 4236. The master of any vessel going into or coming out of any port situate upon waters which are the boundary between two States may employ any pilot, duly licensed or authorized by the laws of either of the States bounded on such waters, to pilot the vessel to or from such port.

South Carolina and Florida are the neighbors of Georgia, the first on the northern and the other on the southern waters of the Atlantic Ocean, which is the common boundary of the three on the east. The waters of the Atlantic are the boundary between the territory of Georgia on the one hand and of those two States on the other. Bays and inlets flow into the territory of each, and divide or bound that territory. In so far, therefore, as those ports of South Carolina and Florida are concerned, which are so situated, it could not have been the intention of Congress construing these enactments, revised and codified side by side, *in pari materia*, to annul the Georgia act in reference to the exception which did not compel vessels from such ports to employ Georgia pilots; because such legislation would have been in the teeth of the act of 1837, though seemingly violative of that of 1866, inasmuch as the act of 1837 provides that a pilot of the port of either State in such cases, duly licensed by that State, may be employed; and the reason of the act of 1837 is obvious. In such contiguous ports, coating vessels constantly plying between them, the pilot of each would be familiar with the waters of both. In respect, therefore, to such ports of South Carolina and Florida as come within the act of Congress of 1837, Revised Statutes, paragraph 4236, we think that section 1512 of our code is not affected by the congressional enactment of 1866, paragraph 4237 of the Revised Statutes, but that the provision or exception in respect to other ports of South Carolina and Florida, not fairly within the sense of paragraph 4236 of the United States Revised Statutes, is annulled and abrogated.

But does the whole of section 1512 of the Georgia code thereby fall? By paragraph 4237 of the U. S. Revised Statutes it is only "the regulations and provisions making such discriminations which are annulled and abrogated." The exception in the Georgia statute, therefore, is abrogated, but not the entire statute. Such is the rule, even if the Constitution of the United States itself had been violated by a part of a statute of the State. If the objectionable part can be taken out of the statute, leaving other parts therein which it may be presumed would have been enacted without unconstitutional part, that which is free from the unconstitutional taint will remain unaffected. Cooley on Con. Lim., 214, 15, and cases cited, 103 United States, '80, '83, '4; Georgia, 26. Surely if a Congressional statute,

and not the fundamental law itself, be involved, the rule will not be more stringent.

Therefore, striking out the exception in the cases of South Carolina and Florida, as the remaining part would stand, the right of the plaintiff to recover would remain unaffected. The application of the rule that part of a statute may stand, though part be unconstitutional or annulled by constitutional legislation of Congress to to this section of our code, will be more apparent when the original act (Crawford and Marburn's Digest, p. 592, 3, 4) is examined, which does not embrace any of the exception or exemption of the code, except the port of Charleston, from the fact of the close neighborhood and commercial coastwise intercourse of the cities of Georgia and that port. Because that single exception was in conflict with the act of Congress, would the entire Georgia act of 1799, published in that digest, be annulled and abrogated? Clearly not, we think.

Secondly. Does paragraph 4444 of the Revised Statutes of the United States annul this section 1512 of the Georgia code? That paragraph must be construed with paragraph 4401, which is as follows:

SEC. 4401. All coastwise seagoing vessels, and vessels navigating the great lakes, shall be subject to the navigation laws of the United States when navigating within the jurisdiction thereof; and all vessels propelled in whole or in part by steam, and navigating
54 as aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam vessels in passing, as provided by this title; and every coastwise seagoing steam vessel subject to the navigation laws of the United States and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats.

This paragraph, like the other, 4444, is under the title, Regulation of Steam Vessels. It was enacted in 1871, and paragraph 4444 was enacted at the same time. Both are in the same act of Congress, and when those acts were revised are put in the same division and title.

Construing them together, the two paragraphs mean that when a steam vessel, not sailing under register, that is not trading with foreign ports, is on her coastwise voyage, she must have a pilot aboard licensed by the United States authorities, and if she has such a pilot aboard she cannot be interfered with by State laws or regulations. Paragraph 4444 expressly declares that no pilotage shall be levied by State authority upon any steamer "piloted as provided by this title." Was this steamer, the Saxon, as appears from the record, so piloted when the plaintiff tendered his services? Smith, the pilot she afterwards received, was not aboard, neither her master, nor any other pilot then aboard, was licensed by the United States Inspectors of Steamboats to conduct her over Tybee bar and up the Savannah river. The master was licensed by the board of inspectors at Philadelphia, for the Atlantic coast, but not *co nomine* for Tybee bar and the Savannah river. The ship was on the Atlantic coast of the State of South Carolina when she was spoken by the plaintiff.

She then and there had on board her master, who was a pilot licensed for that coast, and being a coastwise steam vessel, then and there piloted according to title 52 of the Revised Statutes of the United States, it is insisted by defendant's counsel that she was not bound by the Georgia statute to take the plaintiff as the first pilot who offered himself to her, and that under these facts she cannot be forced by operation of our statute to pay him full fees for taking her thence to the port of Savannah; because, it is argued, the paragraph 4444 of the Revised Statutes annuls the Georgia act so far as the coastwise voyage of the steamer so piloted is concerned. We cannot hold that the license at Philadelphia to the master of the steamer as pilot for the Atlantic coast merely empowered him to go into the Savannah port, situated miles up the Savannah river—to pass over Tybee bar and traverse the river with all its local difficulties of navigation to a port not on the coast, but up the river some distance therefrom—without the aid of a pilot licensed by the United States local inspectors for Savannah. We hold, with the learned judge below, that this license given by Philadelphia inspectors expired, and was intended by those inspectors to expire, with the coast voyage of the vessel. Such appears, likewise, to have been the view of the owners and master of the vessel; otherwise they would not have engaged the other pilot (Smith) licensed by the United States Inspectors at Savannah, and for the port of Savannah, to meet the vessel off the South Carolina coast and pilot her over Tybee bar and up the river to Savannah. Such, too, appears to be the construction put on it by the Savannah Ocean Steamship Company, whose captains and masters each have a license both from the State and United States authorities at Savannah to pilot their vessels over the bar at Tybee and up and down the Savannah river to and from the city. Such, too, is the construction which sound sense and public policy would put on the statute, or that clause of it under consideration and codified in paragraph 4444 of the Revised Statutes. Inspectors at Philadelphia would be as competent as those at Savannah to license pilots by judging of their competency and fitness for the Atlantic coast; but they would not be to judge of their qualifications to act as pilots over Tybee bar and up and down the Savannah river. Hence the inspectors at Philadelphia, we think, properly construed the true intent and meaning of the act of Congress, and limited the license they gave the master of the Saxon to the Atlantic coast.

The exception in the concluding paragraph of 4444 of the United States Revised Statutes, to wit, "other than coastwise steam vessels," to the general provision that nothing in the whole title 52 shall annul or affect State laws requiring vessels entering a port in such State to take a pilot duly authorized by the laws of the State, does not apply to the coastwise steamers whose masters or captains have no license to pilot within the bar and up the rivers of the State from the United States authorities. If they have such license from the United States authorities to pilot there, then no State law shall require an additional license, and enforce the collection of the fees of a pilot so licensed by the State; but if there be no licensed pilot by

United States authority to pilot the steamer within the bar and up the river, then the State law remains in force.

So that the State laws and the United States laws are thus harmonized and work smoothly together. Both stand on good sense and sound policy. Both require license by competent authority at the port to be entered, or at least authority to enter it by the pilot. If it be a coastwise steamer the license by the United States authority will suffice, and the State must not interfere; if any other vessel, the State may enforce its law. If the coastwise steamer be not authorized by license to the master, or some other pilot on board, to cross the bar and enter the port, then the State law is still operative.

If the Georgia law was still operative on this steamer, which was plying towards Tybee bar, and bound for Savannah, then she was bound to receive the first pilot who tendered service, and when she refused him, his right, as well by the Georgia statute, perhaps by general maritime law, was perfect, by implied contract, to recover fees as though he had effected what he had offered to do. It will not do to say that off the South Carolina coast when spoken by plaintiff she was on the Atlantic coast, and the license to her master as pilot was there good. The pilots from Savannah must go outside the bar to meet the incoming vessels. The policy of all maritime laws is to push them out to sea. The Savannah river is the boundary between Georgia and South Carolina, and so soon as the pilot boat steers north beyond Tybee bar she is on the Atlantic and on the South Carolina coast. If then and there a vessel with no licensed pilot for the port of Savannah be at liberty to reject a pilot because the vessel has a coast pilot aboard, when is she bound to receive him? Within the bar? To pilot her over the bar is part of his duty, and this he cannot perform if he does not aboard outside.

So that the great maritime policy, commercial necessity, the safety of ships, of freight, of limb, of life, demands that these hardy seamen push out to sea, and that he who first offers service by encountering danger and risking life shall receive the reward of his energy and hardihood, and pilot the vessel into port. We do not think that Congress intended to annul and abrogate State laws which enact into practical life this principle; but that the statute enacted by that body was designed to exclude from the power of the State to require any license when the authorities of the Union had granted it—leaving the principle, that of two licensed by United States authority, that pilot who first offered service should be received, and if rejected should be entitled to compensation for his labor and risk according to the State law, still in force. In this case, therefore, we think, under the facts admitted to be true, that the Georgia statute, section 1512 of the Code, is of force, not being unconstitutional or annulled, so far as it authorizes plaintiff's recovery by any act of Congress; that the plaintiff is entitled to recover, and that the judgment be reversed.

55 STATE OF GEORGIA, *ss:*

To the Honorable James Jackson, chief justice of the supreme court of Georgia:

The petition of Spraigue, Soulle & Company, composed of ——— ———, of the city of Philadelphia, in the State of Penn., and owners of the steamer "Saxon," coasting between said city of Philadelphia and the city of Savannah, in the State of Georgia, respectfully showeth:

That at the September term, 1882, of the said supreme court there came on to be heard the cause of J. J. Thompson, plaintiff in error, *versus* your petitioners, as defendants in error.

That said cause had originated in an attachment at the suit of said Thompson in a justice court, in the city of Savannah, for the sum of ninety-three & $\frac{16}{100}$ ($93\frac{16}{100}$) dollars, claimed to be due him from your petitioners as a pilot who had offered to pilot the said steamer "Saxon" over Tybee bar and up the Savannah river to the city of Savannah, in compliance with the statutes of the State of Georgia, and upon being refused so to pilot said vessel had sued your petitioners for the said sum of ninety-three & $\frac{16}{100}$ ($893\frac{16}{100}$) dollars, and, as non-residents of the State of Georgia, had obtained an at-
56 tachment against them, and had it levied on their said steamer "Saxon."

That said Thompson founded his claim upon certain sections of the statute law of the State of Georgia, as set forth in the code of Georgia, relating to pilots and pilotage, and that said justice court, over the objection of your petitioners, gave judgment against them for the amount claimed by said Thompson. From this judgment your petitioners took an appeal to the superior court of Chatham county, in accordance with the laws regulating such appeals, and thereupon a- agreed statement of facts submitted by counsel, and which is fully set forth in the record, the superior court reversed the judgment of the justice court awarding judgment against your petitioners. From this judgment of the superior court the said J. J. Thompson prosecuted a writ of error to the supreme court of Georgia, in terms of the law in such cases made and provided, and on the — day of January, in the year one thousand eight hundred and eighty-three, the honorable supreme court of Georgia, through its chief justice, rendered an opinion, in which the judgment of the said superior court was overruled and reversed, and the judg-
57 ment of the said justice court allowed to stand and be of force against your petitioners and the bondsmen who had gone surety for them in the attachment suit to replevy the said steamer "Saxon."

That the said supreme court of Georgia is the highest court of law and equity in the said State of Georgia wherein a decision could be had in said cause. That the judgment of the said supreme court of Georgia is founded upon the validity of a statute of the State of Georgia, found in sections 1511 to 1517, inclusive, of the code of Georgia, and that the said statutes of Georgia are void and unconstitutional, not conferring any authority or power upon the said J.

J. Thompson to bring and maintain any suit or action at law or in equity against your petitioners under the state of facts as agreed upon, and which are fully set forth in the record, to which reference is hereby made; and that the said sections of the code of Georgia are void and of no effect, inasmuch as they are obnoxious to and in conflict with the statutes of the United States of America as set forth in sections 4236, 4237, 4401, 4444 of the Revised Statutes, and
58 also with the Constitution of the United States, article fourth, section second, article 14, section 1, being the fourteenth amendment to the said Constitution.

Your petitioners further show that they have been greatly damaged by the decision of the supreme court of Georgia, and prays your honor to grant them a writ of error to the Supreme Court of the United States, and the proper citation thereon, to the end that the error of such decision, if any there has been, may be duly corrected.

LAWTON & CUNNINGHAM,
HENRY B. TOMPKINS,
For Petitioners.

Filed in office 7 Feb'y, 1883. Z. D. HARRISON,
Cl'k S. C. Ga.

59 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between Joseph J. Thompson, plaintiff in error, and Spraigue, Soullee & Company, of the city of Philadelphia, owners of the steamer "Saxon," defendants in error, wherein was drawn in question the validity of a statute of the State of Georgia, on the ground of its being repugnant to statutes of the United States and also to the Constitution of the United States, and the decision was in favor of the validity of the said statute of the State of Georgia, whereby a manifest error has happened to the great damage of the said Spraigue, Soullee & Co., as by their complaint appears.

We being willing that error, if any hath been committed, should be duly corrected, and full and speedy justice done to the par-
60 ties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the —— Monday in October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, that the Supreme Court may cause further

to be done therein to correct that error, what of right and according to the laws of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the 6th day of February, in the year one thousand eight hundred and eighty-three.

[Seal U. S. Circuit Court, N. D. Georgia.]

A. E. BUCK, *Clerk.*

ATLANTA, GEORGIA, *7th February*, 1883.

The above and foregoing writ of error allowed by—

JAMES JACKSON,
Chief Justice Supreme Court of Georgia.

61 [Endorsed:] Supreme Court of the United States. Spraigue, Soullee & Co., plaintiffs in error, *versus* Joseph J. Thompson, defendant in error. Writ of error to the supreme court of Georgia. Filed in office Feb'y 7, 1883. Z. D. Harrison, cl'k S. C. Ga. Henry B. Tompkins, att'y for pl'ffs in error.

62 UNITED STATES OF AMERICA:

To Joseph J. Thompson, of the county of Chatham, State of Georgia, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington, on the —— day of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Georgia, wherein Spraigue, Soulle & Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable James Jackson, chief justice of the Supreme court of Georgia, this 7th day of February, in the year one thousand eight hundred and eighty-three.

Z. D. HARRISON,
Clk S. C., Ga.
JAMES JACKSON,
Chief Justice Supreme Court of Georgia.

63 GEORGIA, *Chatham County:*

Due and legal service of the within citation acknowledged and copy and other service waived, this 7th day of February, 1883.

J. J. ABRAMS,
Att'y for J. J. Thompson.

[Endorsed:] Supreme Court of the United States. Spraigue, Soullee & Co., pl'ffs in error, *versus* Joseph J. Thompson, def't in error. Citation. Filed in office 7th February, 1883. Z. D. Harrison, cl'k S. C., Ga. Henry B. Thompkins, att'y for pl'ffs in error.

64 SPRAIGUE, SOULLE & CO., Pl'ffs in Error,
vs.
JOSEPH J. THOMPSON, Def't in Error.

Know all men by these presents that Spraigue, Soulle & Company (a firm doing business in the city of Philadelphia, and composed of———
———, ——— ———), as principals, and D. C. Bacon R. B. Reppord, and James K. Clarke as securities, are held and firmly bound unto the above-named defendant in error in the sum of one thousand dollars, which payment, well & truly to be made, the said Spraigue, Soule and Company, as principals, and the said D. C. Bacon, R. B. Sheppard, and James R. Clarke as sureties, are jointly and severally bound, and do hereby firmly bind themselves, their heirs & assigns, executors, and administrators firmly by these presents.

Signed, sealed, and dated this 6th day of February, in the year one thousand eight hundred and eighty-three.

Whereas the above-named the plaintiffs in error, Spraigue, Soule & Co., has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-
65 entitled suit by the supreme court of Georgia:

Now, therefore, the consideration of this obligation is such that if the above-named Spraigue, Soule and Company shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same to be and remain in full force and virtue.

SPRAIGUE, SOULE & CO., [L. S.]
By LAWTON & CUNNINGHAM, [L. S.]
Attorneys of Record.
D. C. BACON. [L. S.]
R. B. REPPORD. [L. S.]
JAMES K. CLARKE.

Signed, sealed, and delivered in presence of—
W. L. S. GIQUILLIAT,
Not. Pub., Chatham Co., Ga.

The above bond examined and approved this 7th day of February, A. D. 1883.

JAMES JACKSON,
Chief Justice Supreme Court of Georgia.

Filed in office Feb'y 7, 1883.

Z. D. HARRISON,
Clk S. C., Ga.

66 CLERK'S OFFICE SUPREME COURT OF THE STATE OF GA.,
ATLANTA, GA., *M'ch 10th*, 1883.

I hereby certify that the foregoing pages hereto attached contain true & complete copies of the bill of exceptions and transcript of record of file in this office in the case therein stated, and of the judgment and opinion of the supreme court of the State of Georgia in said case, of the petition for writ of error to the Supreme Court of the

United States, and of the bond filed with said petition, together with the original writ of error and original citation in said case.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[Seal Supreme Court of the State of Georgia. Constitution. 1845.]

Z. D. HARRISON,
Clk S. C., Ga.

Endorsed on cover: Georgia supreme court. No. 212. Spraigue, Soullee & Company, owners of the steamer "Saxon," plaintiffs in error, *vs.* Joseph J. Thompson. Filed 2d April, 1883.

Office Supreme Court U. S.
FILED.
MAR 26 1886
JAMES H. McKENNEY.
CLERK.

118-90

STATEMENT OF CASE; ASSIGNMENT OF ERROR; AND BRIEF OF LAW POINTS.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 212.

SPRAIGUE, SOULLEE, AND COMPANY, OWNERS OF THE STEAMER "SAXON," PLAINTIFFS IN ERROR,

vs.

JOSEPH J. THOMPSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

HENRY B. TOMPKINS,
Of Counsel for
Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 212.

SPRAIGUE, SOULLEE AND COMPANY, OWNERS OF THE STEAMER "SAXON,"

Plaintiffs in Error.

vs.

JOSEPH J. THOMPSON,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA

I.

STATEMENT OF THE CASE.

In August, 1881, the steamer "Saxon," owned at the port of Philadelphia, in the State of Pennsylvania, was engaged as a licensed coaster plying between Philadelphia and the port of Savannah, Ga., having as her Master one S. W. Snow, who was duly licensed under Title 52 of the U. S. Revised Statutes both as a master of a steam vessel and as a pilot. The pilot's certificate was issued in November, 1880, at the port of Philadelphia, "for the Atlantic coast," but did not specifically include Tybee bar and the Savannah river.

On 9th August, 1881, while said steamer "Saxon" was on her trip from Philadelphia to Savannah, and while off Cape Romain, on the coast of South Carolina, she was spoken by Joseph J. Thompson as a pilot for Tybee bar and Savannah river, he being the first pilot to tender his services to the master of said steamer on the said trip to Savannah. That said Thompson was duly licensed as a pilot by the Commissioners of Pilotage for the State of Georgia, at Savannah, for Tybee bar and the Savannah river, and was also licensed by the local U. S Inspectors, at Savannah, to conduct steam vessels over Tybee bar and up the Savannah river.

That Thompson being advised of the departure of the "Saxon" from Philadelphia went purposely to meet her, tendered his services and they were refused.

That the steamer had procured the services of Walter W. Smith, a pilot duly qualified by State and United States authority, as was Thompson, to pilot said steamer regularly into and out of Savannah, and who was under contract and pay from the time said vessel left Philadelphia. That the master of the said steamer "Saxon" had been notified by said Smith to stop at Martin's Industry Lightship and take on said pilot. On the 10th day of August, 1881, said steamer arrived at said lightship and took said pilot, Smith, who brought her over the bar and up the Savannah river. That said Smith had continued as pilot of said steamer from said 10th August, 1881, till the time of trial, on 10th June, 1882.

It was further admitted as evidence that Cape Romain is north of the port of Charleston, S. C., and that Martin's Industry Lightship is south of Charleston and north of Tybee bar. That said Smith was in Savannah when the "Saxon" left Philadelphia, was not piloting the said steamer when she was spoken by Thompson, but met the steamer afterwards by contract, and was taken on board by the master.

That the sum of $93.17 was the proper pilot charge if Thompson was entitled to anything.

Attention is specially directed to these points:

1. The "Saxon" was a coastwise steamer, whose home port was Philadelphia.

2. She was plying regularly between Philadelphia and Savannah.

3. That the services of the pilot Thompson were tendered off Cape Romain, which is north of the port of Charleston off the South Carolina coast.

4. That the pilot Smith was in the regular employment of the "Saxon" to pilot her in and out of the port of Savannah, on her regular trips between Philadelphia and Savannah; and that he awaited her coming outside the Tybee bar on this trip and piloted her to Savannah.

5. That the Master of the "Saxon" was regularly licensed as Master of a steam vessel, and as a pilot for the *Atlantic coast* by the U. S. inspectors at his home port.

6. That the Masters of steamers of the Ocean Steamship Company, whose home port is Savannah, have licenses as pilots up and down the river and over Tybee bar. There was no evidence or admission as to how the Ocean Steamship Company's vessels are piloted when they reach New York, or other Atlantic ports, to which they trade.

The action was begun by attachment in a Justice Court at Savannah against Spraigue, Soullee & Company as owners of steamer "Saxon," and the steamer attached on the ground that the owners resided outside of the State of Georgia. The affidavit for attachment stated:

"That Spraigue, Soullee & Co. composed of certain Spraigue and Soullee, and certain parties unknown to deponent, are indebted, etc.,

* * * that the said firm of Spraigue, Soullee & Co. reside out of the State of Georgia."

In Georgia, suits by attachment or otherwise against firms need not set out the individual names of each partner; but may be brought against such firm in its firm name only. Code of Georgia, Sections 1898 and 1899. And in this case the bond to dissolve the attachment and release the steamer, was given by the attorneys employed by the local agent at Savannah, Wm. Hunter. [See affidavit by H. C. Cunningham hereto attached in appendix, p. 20.]

On the hearing before the Justice Court, judgment was given for the plaintiff, Joseph J. Thompson, for the full amount claimed, on — day of October, 1881. This was appealed to the Superior Court of Chatham county and came on to be heard by the Court on an agreed statement of facts. On 16th June, 1882, the judgment of the Justice Court was set aside and a judgment for the said owners of the steamer "Saxon" rendered. From this decision a writ of error was taken to the Supreme Court of Georgia, the highest appellate Court of the State and the judgment of the Superior Court of Chatham county reversed, as set forth in the opinion of the said Supreme Court in 69 Georgia Reports, beginning at p. 409. This opinion is set out in full in the transcript of the Record of this case, beginning at p. 17.

II.

ERRORS ASSIGNED.

1. The Court below erred in not giving judgment for the plaintiffs in error, on the ground that the 1512 section of the Code of Georgia, under which defendant in error brought his suit, is "annulled and abrogated" by section 4237 of the Revised Statutes of the United States.

2. The Court below erred in not giving a judgment for the plaintiffs in error, on the ground that section 1512 of the Code of Georgia is "annulled and abrogated" by said section 4237 of Revised Statutes so far as it discriminates against steam coasting vessels, by requiring them to accept any pay for the services of pilots, tendering their services to such coasters sailing between the ports of Georgia and the ports of all other States, while excepting such coasters as sail between the ports of Georgia and the ports of South Carolina or the ports of Georgia and the ports of Florida.

3. The Court erred in not giving judgment in favor of said plaintiffs in error, on the ground that said section 1512 of the Code of Ga. is in conflict with and rendered null and void by sec. 4401 of the Rev. Stat. of U. S., in so far as said sec. of the Ga. Code attempts to authorize any pilot to tender his services to, or to sue for rejecting such services, the master or owners of any coast-wise steam vessel.

4. The Court erred in not giving judgment in favor of the plaintiffs in error, on the ground that the commercial clause of the Constitution of the United States (section 8, paragraph 3, article 1)

is in conflict with and renders null and void the said section 1512 of the Code of Georgia, in that said section 1512 of the Code of Georgia permits all vessels and water-craft, of whatsoever kind or tonnage, to enter and depart from the several ports of Georgia, coming from or sailing to any of the ports of South Carolina or Florida, while said sec. imposes certain conditions, assessments and burdens upon vessels of similar character and tonnage sailing between the ports of Georgia and all other ports of the United States and foreign countries.

5. The Court erred in not giving judgment in favor of said plaintiffs in error, on the ground that par. 1, sec. 2., art. 4 of the Federal Constitution is in conflict with and renders null and void sec. 1512 of the Code of Georgia. Said Constitutional provision being: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

6. The Court erred in not giving judgment for the plaintiffs in error, on the ground that said sec. 1512 of the Code of Ga. is obnoxious to, and rendered null and void by, the 14th amendment to the Federal Constitution as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State * * * deny to any person within its jurisdiction the equal protection of its laws."

7. The Court erred in not giving judgment for the plaintiffs in error, on the ground that section 1512 of the Code of Georgia is obnoxious to, and rendered null and void by, art. 1, section 9, par. 5 of the Constitution of the United States, which provides that: "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another. * * * "

III.

BRIEF UPON LAW POINTS.

All the sections of the U. S. Revised Statutes and of the Code of Georgia bearing upon the questions in this case are set forth in the appendix to this pamphlet, beginning on page 16.

This Court is now asked to reverse the decision of the Supreme Court of Georgia:

FIRST.

Section 1512 of the Code of Georgia is the only law under which Thompson, the defendant in error, has a right to maintain the suit against the plaintiffs in error for the tender of his services as a pilot.

This section, 1512, of the Georgia Code, is as follows:

"Any person, master or commander of a ship or vessel, bearing towards any of the ports or harbors of this State, *except coasters in this State, and between the ports of this State and those of South Carolina, and between the ports of this State and those of Florida*, and who refuse to receive a pilot on board, shall be liable, on his arrival in such port of this State, to pay the first pilot who may have offered his services outside the bar, * * * * the full rate of pilotage established by law for such vessel."

Section 4237 of the United States Revised Statutes, says:

"No regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half pilotage between vessels sailing between the ports of different states, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discriminations are annulled and abrogated."

It is impossible that these two sections should both have vitality and operation.

That Congress has power, under the commercial clause of United States Constitution to enact a law regulating pilotage is not an open question. Nor does it matter if such law is passed after a State Statute. In cases of conflict the State law must be set aside.

102 U. S 572; Wilson vs. McNamee.
13 Wall 236; *Ex parte* McNeill
12 Howard 299; Cooley vs. Board of Wardens.

If section 4237 of Revised Statutes is valid how, and to what extent, does it invalidate section 1512 of the Code of Georgia? It says to the extent of *annulling* and *abrogating* the regulations or provisions discriminating:

1. *Between* vessels sailing between the ports of different States.
2. *Against* steam vessels.
3. *Against* national vessels of the United States.

The learned Chief Justice of the Supreme Court of Georgia, in overruling and reversing the opinion of the Court below, held that the effect of section 4237 of Revised Statutes was not to let in vessels sailing between the ports of Pennsylvania and Georgia without payment of pilotage fees, *because* section 1512 of the Georgia Code allowed vessels to come in free of pilotage fees when sailing between South Carolina and Georgia, or Florida and Georgia; but that its effect was to fix the same pilot charge upon the South Carolina or Florida coaster.

So that the effort of the Pennsylvania vessel to get relief from pilot charges imposed by the laws of Georgia upon it, but not upon coasters plying between ports of the State of Georgia, between South Carolina and Georgia, or between Florida and Georgia, was not to obtain the relief, but to get a judicial opinion that the same burdens should also be extended to the Georgia, South Carolina and Florida coasters. Not that the discrimination shall be "annulled and abrogated," so as to favor the less favored; so as to extend the rights, privileges and immunities to citizens of Pennsylvania that are accorded by Georgia to her own citizens, to citizens of Florida or South Carolina; so as not to deny to citizens of Pennsylvania, carrying their property into Georgia, the equal protection of the laws from levies and assessments that are given to citizens of Georgia, Florida and South

Carolina; so as to declare the citizens of Pennsylvania entitled to all privileges and immunities in Georgia that shall be claimed by and dispensed to citizens of other States bringing their property into Georgia, or citizens of Georgia sailing their vessels between her own ports or into ports of Florida or South Carolina; but the opinion was that burdens not designed by the legislative branch of the Government to be imposed shall, by the judiciary, be declared imposed upon persons and property specifically exempted.

If this be a correct expounding of the law, then the operation of the 4237 section of the Revised Statutes upon a statute of Georgia exempting all vessels coming into her ports from pilot charges, *except* national vessels of the United States, would have the effect not to exempt any vessel of any kind. That is, for the legislature of Georgia to pass a law that *all* vessels coming into her ports should be exempt from taking a pilot except vessels from Maine, would be to pass a law that no vessels should be exempt from taking a pilot. Or, in other words, if the State of Georgia should repeal all her pilotage laws and then enact a law that only vessels plying between her ports and the ports of Maine should take a pilot—such a law would be effective to compel all vessels coming into Georgia, from whatever port, to take a pilot. Or, again, if the only pilot regulation on the statute book of Georgia should be that all vessels coming into her ports from all places on earth should be exempt from pilot charges, except national vessels of the United States, then the real law would be, not also to exempt the national vessel, but to impose pilot charges on every other vessel.

In no case, from Gibbons vs. Ogden to Walling vs. the people, etc., has this Court held or intimated that to declare a State statute unconstitutional was effective to let the statute be amended by striking out the obnoxious discrimination *and* enlarging the operation of the statute.

So, in every instance where State laws have been declared unconstitutional in part, the ruling of the Court has been to grant the relief asked for by the suitor, where the burder was imposed by the unconstitutional part of the State law.

Tierman *vs.* Rinker, 102 U. S. 123.

Virginia Coupon Cases, 114 U. S. 269.

Allen *vs.* Lee, 103 U. S. 80.

Packet Co. *vs.* Keokuk, 95 U. S. 80.

The Act of 13th July, 1866, (Revised Statutes, §4237,) abolished all discriminations in the rates of pilotage or half pilotage between coasting vessels entering the ports in any State of the Union. No State was thereafter authorized, through her pilot laws, to charge or collect *more* pilotage from one coasting vessel than from another. So if a vessel plying between Georgia and South Carolina was charged nothing under the Georgia pilot laws to enter a Georgia port, then a vessel plying between a Georgia port and a port of Pennsylvania could not be subjected to any pilot charges by the laws of Georgia.

The steamer "Saxon" being a coaster plying between Philadelphia and Savannah, is, so far as the State of Georgia is concerned, to be considered in the light of any other vessel entering a Georgia port, and as such free to do so with or without a government pilot, *because*

Section 1512 of the Code of Georgia is illegal and void, by reason of Section 4237 of the Revised Statutes.

SECOND.

There is no U. S. law that imposes upon any State the necessity of having any law of pilotage. The extent to which the Government has imposed upon any steam coasting vessel the necessity of taking pilots is found in Revised Statutes, sections 4401, 4444.

These two sections expressly exclude the obligations of a steam coaster to take a pilot, authorized under State law, in any contingency.

The latter part of section 4401, prescribes that: "every coastwise sea-going steam vessel * * * shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspector of steamboats."

The agreed statements of facts shows that Walter W. Smith was the regularly employed pilot for the steamer "Saxon," who took charge of her before she left the high seas to enter the port of Savannah. The right of Thompson "cruising or standing out to sea," and offering his services to an incoming vessel, was derived solely from the Code of Georgia, secs. 1511 and 1512. That Thompson happened to be licensed by the U. S. Inspectors at Savannah, as a pilot, can confer no authority, either for him to offer himself to a steam coaster or to claim pilot fees for being refused by the Master. The U. S. law is that steam coasters shall, when not on the high seas, provide themselves with U. S. pilots. The reply to Thompson's suit is, that the "Saxon" did make such provision by employing the pilot Smith, if her Master, Snow, was not himself a qualified pilot. The judgment, therefore, in favor of Thompson was against section 4401 of the Revised Statutes.

If the "Saxon" had totally failed to provide herself with a pilot, yet there is no law authorizing Thompson to tender his services as a pilot, under a State law regulating State pilots.

The section of Revised Statutes 4236, given so much weight in the opinion of the Supreme Court of Georgia, is taken from the Act of 2d

March, 1837. Not until 1871 was enacted the law from which is taken the sections 4401 and 4444 of Revised Statutes.

See Deady's Reports, 591. *The George S. Wright.*

Let it be supposed that section 1512 of the Georgia Code can be judicially amended by striking out the part that discriminates *in favor of* coasters from Florida and South Carolina, and *against* all other vessels of whatsoever kind—then the section would read: "Any person, master or commander of a ship or vessel bearing toward any of the ports or harbors of the State, * * * * * * and who refuses to receive a pilot on board, shall be liable on his arrival in such port in this State to pay the first pilot who may have offered his services outside the bar, and exhibited his license, if demanded by the Master, the full rates of pilotage established by law for such vessel."

So amended this section is still repugnant to section 4401 of the Revised Statutes. It provides that a pilot with a State license may force himself upon any steam coasting vesssel, or recover pilot fees under the State law, if he is refused, no matter how such steamer may be piloted.

At the argument below it was sought to be shown that Sec. 4401 should be so construed as to require licensed—not registered—coastwise steam vessels to take port pilots authorized under State laws. In support of this position were cited the cases of Steamship Co. *vs.* Joliff, 2 Wall 450, and Cisco *vs.* Roberts, 36 N. Y. 292 The first of these was decided in 1864, and the other in 1867. As has been seen Sec. 4401 of Revised Statutes is taken from Act of Congress of 28th February, 1871. Besides neither case concerned Domestic Coastwise Steamers. One vessel sailed between San Francisco and Panama, and the other was a steamer trading between N. Y. and foreign ports.

On p. 276 of the N. Y. case the language is: "The owners of every registered vessel, leaving or entering our ports, must be content to acquiesce in our regulations for the security of general commerce." It would appear that nothing could be plainer than that the provision in Sec. 4401 made it obligatory upon coastwise steam vessels, *not sailing under register*, when under way, except on the high seas, to be under the control and direction of pilots licensed by the Inspectors of Steamboats. Yet counsel seriously contended that licensed coastwise steamers were not exempt from the State regulations of port pilotage, while steam vessels sailing under register to foreign ports were so exempt.

This novel construction the Court below did not adopt, but held: "Construing Secs. 4444 and 4401 of the Revised Statutes of the United States together, they mean that when a vessel not sailing under register (that is, not trading with foreign ports) is on her coastwise voyage, she must have on board a pilot licensed by the United States authorities. But a license issued by the Inspectors at Philadelphia to the Master of a vessel as pilot for the Atlantic coast, will not be construed to include the right to cross the Tybee bar, and pass up the Savannah river to the port of Savannah. Nor does the exception of coastwise steam vessels from the operation of State laws, contained in Sec. 4444 of the Revised Statutes, include coastwise steamers whose

Masters or Captains have no license to pilot within the bar and up the rivers of the State, from the United States authorities. If they have such license from the United States authorities, no State law shall require an additional license or enforce the collection of the fees of a pilot licensed by the State. But if there be no pilot on board licensed by the United States authorities to pilot the steamer within the bar and up the river, the State law remains of force."

The errors in this statement of the law, found in head note 5, in 69 Ga., p. 409, are these :

1. It is not so, that Sections 4444 and 4401 mean that coastwise steamers when on the voyage "must have on board a pilot licensed by the United States authorities." On the contrary such coasters, "*not sailing under register*, shall, when under way, *except on the high seas*, be under the control, etc., of pilots licensed by the Inspectors of Steamboats."

2. It is contended that it is not so, that a Master of a coastwise steamer, licensed as a pilot at Philadelphia for the "Atlantic coast," is not competent to take his own vessel into the port of Savannah.

3. It is not so, that Sec. 4444 does not apply to such coastwise steamers whose Masters happen not to be licensed, as pilots, to take their vessels within the Tybee bar and up the Savannah river.

On the contrary, if the Master or owner provides for having the vessel properly piloted, as by the employment of a United States pilot to meet the vessel before coming to the bar, then that part of Sec. 4444 applies which says: "Nor shall any pilot charges be levied by any such (State) authority upon any steamer piloted as provided by this title."

THIRD.

Because the steamer "Saxon," when spoken by said Joseph J. Thompson was piloted as provided by the 52d Title of the Revised Statutes, her said master, Snow, being a pilot licensed for the *Atlantic Coast* by the local inspectors at the port of Philadelphia.

The term "Atlantic Coast" includes the sea coast and navigable rivers up to all ports in the United States.

Revised Statutes, section 4348.

Savannah and Philadelphia are in the same district.

Revised Statutes, section 4348.

Philadelphia is no more on Atlantic ocean than is Savannah. It is a continuous water way from one city to the other—from one port to the other—and local inspectors at Philadelphia have power to license pilots for Atlantic coast as including all ports and harbors on that coast.

Revised Statutes, sections 4442, 4444, 4447.

The Montello, 11. Wall, 411.

The Daniel Ball, 10. Wall, 557.

FOURTH.

The Supreme Court of Georgia held that Section 1512 of Georgia Code was unconstitutional, but that it stood purged of the taint by striking from it, not the discriminations against all vessels, except coasters between Georgia and the two states of Florida and South Carolina, but by striking from it the clause favoring vessels plying between Georgia and these two States.

If not instructive, it may be curious, to note precisely how the Court below arrives at this conclusion. On page 23 of the printed record, the Court says: "In our judgment if 1512 of the Georgia Code exempts vessels sailing from ports in Florida and South Carolina altogether from pilotage fees, whilst it exacts those fees from vessels sailing from ports of other States, it is discrimination in the rate of pilotage in the sense and spirit of the act of Congress."

To an ordinary mind, this concession would appear to settle the case adversely to the defendant in error. But not so with the Court below, which, with peculiar ingenuity, proceeds to show how section 4236 of the Revised Statutes demolishes section 4237. The Court says, in commenting on section 4236:

"The Master of any vessel going into or coming out of any port situate upon waters which are the boundary between two States may employ any pilot, duly licensed or authorized by the laws of either of the States bounded on such waters, to pilot the vessel to or from such port."

From this statement of the law the Court arrives at the following deduction of fact: "South Carolina and Florida are the neighbors of Georgia, the first on the northern and the other on the southern

waters of the Atlantic ocean, which is the common boundary of the three States on the East." * * * "The waters of the Atlantic are the boundary *between* the territory of Georgia on the one hand, and of those two States (Florida and South Carolina) on the other. Bays and inlets flow into the territory of each, and divide or bound that territory." That is, the Court below announces, the Atlantic is the *boundary* between Georgia and South Carolina, and Georgia and Florida, *because* bays and inlets flow from the Atlantic and *divide* the territory of these States! If the ample geographic powers of this Court, as laid down in the *Daniel Ball*, 10, Wall 557, could constitute the Atlantic the boundary between Georgia and South Carolina, yet what is to be done with Florida? That State is largely bounded by the Gulf of Mexico. It could scarcely be held that a vessel sailing from Pensacola around the Florida Keys to Savannah, Georgia, would be within the rule laid down by the learned Chief Justice of Georgia.

Beyond this, it is well known that there is no port of South Carolina situated on the Savannah river, even if that river be a bay or inlet flowing into the territory of both these States. Nor is there any Florida port on the St. Marys river, if that river be likewise a bay or inlet dividing or bounding Florida and Georgia on the South.

FIFTH.

If Section 4237 of the Revised Statutes had not been enacted in 1866, then the commercial clause of the Constitution of United States, as well as the clauses guaranteeing equal privileges and immunities to citizens of the various States; and the clause prohibiting the giving a preference to the ports of one State over those of any other State, would have had the effect of abrogating and annulling the 1512 Section of the Georgia Code, in so far as it discriminates against a vessel owned in Philadelphia and sailing to Savannah, and in favor of a similar vessel owned in South Carolina or Florida, and sailing to Savannah; or of a vessel, no matter where owned, sailing between Georgia and South Carolina, or Georgia and Florida.

The pilot laws of Georgia are adopted by the Federal Government:

1. So long as they do not conflict with a statute of the United States.

2. So long as they do not conflict with the Constitution of the United States.

Commerce, whether carried on by land or by water, must be as free between a State, and *any* other State, as it is between such State and the most favored State.

It has been seen (p. 5 of this brief) that the commercial clause of the U. S. Constitution (par. 3, sec. 8, art. 1) is applicable to pilot regulations.

Gibbons *vs.* Ogden, 9 Wheat, 1.

Authorities cited in Desty on Ship and Ad., p. 3, note 14.

Nor is it an open question that citizens of Georgia, or citizens of other States transacting business in Georgia, cannot be put upon a better footing than citizens of any State.

[Constitution of United States, paragraph 1, section 2, article 4.]

Walling *vs.* State of Michigan, Supreme Court Reporter, vol. 6, No. 12, of 15th February, 1886, and authorities there cited.

12 Wall 418. Ward *vs.* Maryland.
103 U. S. 344. Webber *vs* Virginia.
100 U. S. 676. Machine Co. *vs.* Gage.
95 U. S. 465. Railroad Co. *vs.* Husen.
6 Wall 35. Crandell *vs.* Nevada.
112 U. S. 69. Moran *vs.* New Orleans.
96 U. S. 1. Pensacola Tel. Co. *vs.* Western Union Tel. Co.

A State, n more than a city, cannot impose "restrictions upon one class of persons engaged in a particular business, which are not imposed upon others engaged in the same business."

113 U. S. 703. Soon Hing *vs.* Crowley.

By the rulings of this Court a State pilot law is, "as if its provisions had been specially made by Congress."

Gibbons *vs.* Ogden, 9 Wheaton 1.

For Congress to enact a law similar to Sec. 1512 of the Georgia Code would be to declare a preference, by a regulation of commerce, for the ports of South Carolina and Florida, as against the ports of all other States trading coastwise with Georgia ports. Also, it would be to declare a preference for the ports of Georgia, as against the ports of all other States, trading between the ports of South Carolina and Florida. It would be to say to owners of coasting vessels: So long as you trade between any of the ports of Georgia, and the ports of South Carolina or Florida, no pilot charges shall be levied or collected in Georgia, and thus your vessel can afford to carry for less freight than if you traded between ports of States other than these three.

See also, 114 U.S. 270. (295)
Va. Coupon Cases.

Royal v. Va: Supreme Ct. Rep'ts.
Vol. 6. No. 13. p. p. 509. (674)

SIXTH.

The home port of a domestic vessel is presumed to be the place of citizenship of its owner.

16 Wall, 471. Morgan *vs.* Parham.
Ibid 610, 631. Crapo *vs.* Kelly.
Crabbe, 479. Tree *vs.* The Indiana.
1. Newberry, 176, 181. Steamboat Superior *vs.* Steamboat Troy.
17 How, 596. Hays *vs.* Pacific Mail S. S. Co.
114 U. S. 207. Gloucester Ferry Co. *vs.* Penn.

SEVENTH.

Because when the defendant in error offered his services as a pilot he had passed beyond the pilot grounds of Savannah and had gone to the north and east of Charleston, S C, some forty or fifty miles, admittedly in search of the steamer "Saxon," instead of standing out to sea to await the arrival of vessels to the port of Savannah. The steamer "Saxon" was no more bound to take a Savannah pilot off Cape Romain than she was bound to take such Savannah pilot off Cape Hatteras or the New Jersey coast.

Section 1511 of the Code of Georgia says: "Every pilot boat cruising or standing out to sea must offer the services of a pilot to the vessel nearest the bar." Here is meant the Savannah river or the Tybee bar.

It is admitted in the agreed statement of facts, upon which the Court rendered its decision, that the defendant in error Thompson went out to meet the "Saxon," being advised of her departure from Philadelphia. (Printed record, p. 2, side p. 4.) He was, manifestly, no longer in the discharge of his duty as a sworn pilot for the Savannah river and the Tybee bar when he was cruising fifty miles north of Charleston in search of a certain steam coaster.

Court will take judicial notice of geography and position of Cape Romain.

The Montello, 11. Wall, 414.

Even, "while navigating the high seas between ports of the same

State, a vessel of the United States, is, together with the business in which she is engaged, subject to the regulating power of Congress."
102 U. S. 541. Lord *vs.* Steamship Co.
12 Wall 204. State Tonnage Cases.

EIGHTH.

As illustrative of the confusion into which the Supreme Court of Georgia has fallen, in its decisions upon questions of pilots and pilotage, reference is had to the case of Meissner *vs.* Stein, 72 Ga., 234; and the case of Wright vs. Lake, decided on the 26th January, 1886, and in the Georgia Law Reporter, page 265, volume No. 9.

In the first case, pages 238 and 239, the Court says:

"The law, as it stands, gives to pilots in ports and harbors the right to compensation for services actually rendered and accepted, but to those cruising outside of the bar it secures compensation for services tendered, and should the service thus tendered *be accepted*, it entitles them, not only to inward, but outward pilotage fees for the vessel accepting the tender outside the bar."

In the case of Wright *vs.* Lake, the Court reverse this ruling and construction of section 1511 of the Code of Georgia, and says:

"Where a duly commissioned pilot for the port of Brunswick tendered his services to a Master of a vessel outside of the bar to bring his vessel into port, which was declined, and the Master brought his own vessel into port, paying the pilot the fees allowed if he had brought in the vessel, and thereupon the pilot tendered his services to the Master to take the vessel out of port, which were declined, and the Master refused to pay the pilot the fees allowed for such services, the pilot was entitled to recover therefor."

The decision in Meissner *vs.* Stein was correct, and is in accordance with the ruling at page 312, in Cooley *vs.* Board of Wardens, 12 Howard.

It may just here be observed that whatever weight this decision, rendered in 1851, had to authorize discrimination by State pilot laws in favor of coal vessels or others, it is no longer of any force, in this regard, to permit discrimination "between vessels sailing between the ports of one State, and vessels sailing between ports of different States," since the act of Congress of 13th July, 1866, in Revised Statutes, § 4237.

Henry B. Tompkins

of Counsel for Plaintiffs in Error.

APPENDIX.

I.

SECTIONS OF UNITED STATES REVISED STATUTES.

SECTION 4235. Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for the purpose.

SEC. 4236. The master of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, may employ any pilot duly licensed or authorized by the laws of either of the States bounded on such waters, to pilot the vessel to or from such port.

SEC. 4237. No regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half-pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated.

SEC. 4348. The seacoast and navigable rivers of the United States shall be divided into three great districts; the first to include all the collection districts on the seacoast and navigable rivers, between the eastern limits of the United States and the southern limits of Georgia; the second to include all the collection districts on the seacoast and navigable rivers, between the river Perdito and the Rio Grande; and the third to include all the collection districts on the seacoast and navigable rivers between the southern limits of Georgia and the river Perdito.

SEC. 4399. Every vessel propelled in whole or in part by steam shall be deemed a steam-vessel within the meaning of this title.

SEC. 4400. All steam-vessels navigating any waters of the United States which are the common highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this title.

SEC. 4401. All coastwise sea-going vessels, and vessels navigating the great lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof; and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all rules and regulations established in pursu-

ance of law for the government of steam-vessels in passing, as provided by this title; and every coastwise sea-going steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats.

SEC. 4406. Each supervising inspector shall watch over all parts of the territory assigned to him, shall visit, confer with, and examine into the doings of the local boards of inspectors within his district, and shall instruct them in the performance of their duties; and shall, whenever he thinks expedient, visit any vessels licensed, and examine into their condition, for the purpose of ascertaining whether the provisions of this title have been observed and complied with, both by the board of inspectors and the master and owners. All masters, engineers, mates, and pilots of such vessels shall answer all reasonable inquiries, and shall give all the information in their power in regard to any such vessel so visited, and her machinery for steaming, and the manner of managing both.

SEC. 4411. The Board of Supervising Inspectors shall establish such regulations as may be necessary to make known in a proper manner, to local inspectors, the names of all persons licensed under the provisions of this title, the names of all persons from whom licenses have been withheld, and the names of all whose licenses have been suspended or revoked; also the names of all steam vessels neglecting or refusing to make such repairs as may be ordered pursuant to law, and the names of all that have been refused certificates of inspection.

SEC. 4413. Every pilot, engineer, mate, or master of any steam vessel who neglects or willfully refuses to observe the regulations established in pursuance of the preceding section, shall be liable to a penalty of fifty dollars, and for all damages sustained by any passenger, in his person or baggage, by such neglect or refusal.

SEC. 4438. The boards of local inspectors shall license and classify the masters, chief mates, engineers and pilots of all steam vessels. It shall be unlawful to employ any person, or for any person to serve as a master, chief mate, engineer or pilot on any steamer who is not licensed by the inspectors; and any one violating this section shall be liable to a penalty of one hundred dollars for each offense.

SEC. 4442. Whenever any person claiming to be a skillful pilot of steam-vessels offers himself for a license, the inspectors shall make diligent inquiry as to his character and habits, and if satisfied, from personal examination of the applicant, with the proof that he offers, that he possesses the requisite knowledge and skill, and is trustworthy and faithful, they shall grant him license for the term of one year to pilot any such vessels within the limits prescribed in the license; but such license shall be suspended or revoked upon satisfactory evidence of neglect, unskillfulness, inattention to the duties of his station, or intemperance, or the willful violation of any provision of this title.

SEC. 4443. Where the master or mate is also pilot of the vessel he shall not hold two licenses to perform such duties, but the license issued shall state on its face that he is authorized to act in such double capacity.

SEC. 4444. No State or municipal government shall impose upon pilots of steam-vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by this title; nor shall any pilot-charges be levied by any such authority upon any steamer piloted as provided by this title; and in no case shall the fees charged for the pilotage of any steam-vessel exceed the customary or legally established rates in the State where the same is performed. Nothing in this title shall be construed to annul or affect any regulation established by the laws of any State requiring vessels entering or leaving a port in any such State other than coastwise steam-vessels, to take a pilot duly licensed or authorized by the laws of any such State, or of a State situate upon the waters of such State.

SEC. 4447. When any licensed officer is employed on a steamer in a district distant from any local board of inspectors, such inspectors, or the supervising inspector of the district, may grant a renewal of his license, without such licensed officer being personally present, under such regulations as the board of supervising inspectors shall prescribe.

II.

SECTIONS FROM CODE OF GEORGIA.

SECTION 1504. *Commissioners of Pilotage—how appointed.* The corporate authorities of Savannah, Darien, Brunswick and St. Mary's, shall have power, respectively, to appoint Commissioners of Pilotage, now exceeding seven in number, for each place, of whom a majority shall be a quorum, as follows—that is to say: The authorities of Savannah for the bar of Tybee and river Savannah, and the several bars and inlets north of Sapelo bar, the authorities of Darien for Sapelo bar and river Altamaha, and for the several bars and inlets south of Sapelo bar as far as St. Simmons bar; the authorities of Brunswick for the bar of St. Simmons and Turtle River, and the several bars and inlets north of the great Satilla River; and the authorities of St. Mary's for the bar of the great Satilla River, the bar of St. Mary's, and all bars and inlets between the two. All vacancies shall be filled by such corporate authorities respectively in the board of commissioners in which a vacancy shall occur, but no owner or part owner of a pilot boat shall be allowed to act as commissioner of pilotage.

SECTION 1505. *Powers of Commissioners of Pilotage.* The said Commissioners are empowered to license such persons, (being citizens of the United States,) of good character, as they shall think most fit to act as pilots, for the purpose of conducting vessels inward to, and outward from, the several ports for which they shall be licensed, during their good behavior. Pilots already licensed for any of said ports shall continue to act until removed for cause. No person other than a duly licensed pilot shall be entitled to receive any fee, gratuity or reward for conducting or piloting any vessel inward to, or outward from, any of the ports or

harbors for which a pilot shall be licensed. Any person so acting without authority, or interfering with or disturbing a licensed pilot, in the way of his duty, may, on conviction, be fined and imprisoned at the discretion of any court having jurisdiction; but any person may assist a vessel in distress without any pilot on board, if such person shall deliver up the vessel to the first pilot who comes on board and offers to conduct it.

SECTION 1506. *Pilot's License and Oath.* The license to a pilot must be in the form of a certificate of his appointment, which must be signed by a majority of the commissioners, or by their chairman, by their direction, and each pilot on receiving his license, shall take and subscribe an oath in the following form:

"I, A. B., appointed pilot for the port and harbor of . . . . . , do swear that I will faithfully, and, according to the best of my ability, perform the duties of a pilot in and for said port of . . . . . and will at all times—wind, weather and health permitting—use my best endeavors to repair on board every vessel I shall see, and conceive to be bound for, coming into or going out of said port and harbor, unless I am well assured there is some other licensed pilot on board the same; that I will, from time to time, make the best dispatch in my power to convey any vessel committed to my charge coming into or going out of said port or harbor, and will, at all times, well and truly observe, fulfill and follow, to the best of my skill and judgment, all such orders and directions as I may receive from the commissioners of pilotage in all matters and things relating to the duty of a pilot."

SECTION 1511. *Duty of Pilots.* Every pilot boat cruising, or standing out to sea, must offer the services of a pilot to the vessel nearest the bar, unless a vessel more distant be in distress, under penalty of fifty dollars for each and every neglect or refusal, either to approach the nearest vessel or to aid her if required, or to aid any vessel in sight showing signals of distress; and the commissioners, or a majority of them, may, for such neglect or refusal, deprive the pilot of his license.

SECTION 1512. *Master Rejecting Pilot to Pay His Expenses.* Any person, master, or commander of a ship or vessel bearing toward any of the ports or harbors of this State, except coasters in this State, and between the ports of this State and those of South Carolina, and between the ports of this State and those of Florida, and who refuses to receive a pilot on board, shall be liable, on his arrival in such port in this State, to pay the first pilot who may have offered his services outside the bar, and exhibited his license as a pilot, if demanded by the master, the full rates of pilotage established by law for such vessel.

SECTION 1513. *Pilot Bringing in a Vessel has a Right to Lead it Out.* The pilot who brings in a vessel into port shall have the exclusive right to take her out, unless the master of such vessel shall prove to the satisfaction of the commissioners that such pilot misbehaved himself whilst in charge of the vessel, or was, in the meantime, deprived of his license, or that such pilot had obtained the inward pilotage against the right of some other pilot first offering his services, and in any of these cases another pilot may be employed.